INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute, code provisions, and regulations involved	5
Statement	5
Effect on these cases of recent changes in the regulations and the code	23
Summary of argument	28
Argument:	
I. The production-control provisions of the Petroleum Code (article III, secs. 3, 4, and 5) are valid regulations of commerce among the States and with foreign nations	44
A. The petroleum industry is an integrated unit, nation-wide in its ramifications; the great bulk of its products flow in a continuous stream in interstate and foreign commerce	48
B. The conditions under which petroleum is produced necessarily and directly have a substantial and injurious effect upon the interstate market price of petroleum and its products	61
C. The fruitless efforts of the industry and of the States to control the competitive conditions attending the production of oil demonstrate the interstate unity of the oil industry and the need for Federal control	96
D. Under the decisions of this Court the production-control provisions of the Petroleum Code are a valid exercise of the commerce power of Congress	108
II. The production-control provisions of the Petroleum Code are reasonable regulations designed to achieve proper objectives of the Federal Government, of vital concern to the nation; they do not, therefore, involve any infringement of the rights guaranteed by the due process clause of the fifth amendment	128
III. The authorization by Congress of the President to approve codes of fair competition is not an unconstitutional delegation of legislative powers	144
IV. The production-control provisions of the Petroleum Code are authorized by the Recovery Act	155

Argument—Continued. Page

V. Section 9 (c) of the Recovery Act is constitutional 161
A. Section 9 (c) is within the commerce power of Congress 161
B. Section 9 (c) is not an unconstitutional delegation of legislative authority 166
VI. The regulations here in question are in all respects valid and constitutional 169
A. The requirement of periodic reports from producers and refiners and the maintenance of books open to inspection is authorized by section 10 (a) of the Recovery Act as necessary for the enforcement of section 9 (c) of the act .. 169
(1) It is essential to enforcement of section 9 (c) that a system of reports be imposed 171
(2) Periodic reports from all producers are necessary for the enforcement of section 9 (c) 177
(3) Periodic reports from all refiners are also necessary for the enforcement of section 9 (c) 180
(4) Inspection of books and records to supplement the reporting system is essential to the enforcement of section 9 (c) 183
B. The regulations are neither unreasonable nor burdensome; they involve no infringement of the rights guaranteed to petitioners by the due process clause of the fifth amendment 186
C. The regulations do not exceed the power of Congress under the commerce clause even though they apply to persons not engaged in interstate commerce 187
D. The regulations do not violate the constitutional prohibitions against unreasonable searches and seizures and compulsory self-incrimination 188
Conclusion 194
Appendix A (statutes, code provisions, regulations, and orders) . 196
Appendix B. (Separately printed, containing excerpts from various sources cited.)

CITATIONS

Cases:

Adams Express Co. v. *Croninger*, 226 U. S. 491 46
Amazon Petroleum Corporation v. *Railroad Commission*, 5 F. Supp. 633 ..... 6, 98
American Foundries v. *Tri-City Council*, 257 U. S. 184 27
Appalachian Coals, Inc. v. *United States*, 288 U. S. 344 ... 119, 120, 130, 138

Cases—Continued.

Page

Avent v. *United States*, 266 U. S. 127 ..... 147, 154, 169
Bacon v. *Illinois*, 227 U. S. 504 46
Bailey v. *Drexel Furniture Co.*, 259 U. S. 20 128
Baltimore & Ohio R. R. Co. v. *Interstate Commerce Commission*, 221 U. S. 612 ..... 44, 187, 191
Bandini Co. v. *Superior Court*, 284 U. S. 8 ..... 49, 61, 99
Barnard v. *Monongahela Natural Gas Co.*, 216 Pa. 362 63
Bartlett Frazier Co. v. *Hyde*, 65 F. (2d) 350, Certiorari denied 290 U. S. 654 ..... 185, 186, 187, 188, 191, 192
Bedford Cut Stone Company v. *Journeymen's Stone Cutters' Association*, 274 U. S. 37 113
Block v. *Hirsh*, 256 U. S. 135 125
Boske v. *Comingore*, 177 U. S. 459 171
Boyd v. *United States*, 116 U. S. 616 ..... 188, 191
Brewster v. *Gage*, 280 U. S. 327 171
Brooks v. *United States*, 267 U. S. 432 ..... 41, 127, 164, 165
Burdeau v. *McDowell*, 256 U. S. 465 189
Burns Baking Company v. *Bryan*, 264 U. S. 504 49
Buttfield v. *Stranahan*, 192 U. S. 470 ..... 38, 146
Caha v. *United States*, 152 U. S. 211 169
Caminetti v. *United States*, 242 U. S. 470 163
Carroll v. *United States*, 267 U. S. 132 190
Champion v. *Ames*, 188 U. S. 321 163
Champlin Refining Co. v. *Corporation Commission*, 286 U. S. 210 ..... 23, 28, 38, 47, 62, 77, 97, 144
Chassaniel v. *Greenwood*, 291 U. S. 584 46
Chesapeake & Ohio Ry. v. *United States*, 283 U. S. 35 154
Chicago Board of Trade v. *Olsen*, 262 U. S. 1 ..... 34, 44, 46, 49, 109, 119, 187, 188, 191, 192
Clark Distilling Co. v. *Western Maryland Ry. Co.*, 242 U. S. 311 ..... 41, 163, 169
Colorado v. *United States*, 271 U. S. 153 ..... 35, 111, 154
Consolidated Rendering Co. v. *Vermont*, 207 U. S. 541 189
Cooley v. *Board of Port Wardens*, 12 How. 299 ..... 163, 169
Coordination of Motor Transportation, 182 I. C. C. 263 133
Coronado Coal Co. v. *United Mine Workers*, 268 U. S. 295 .. 34, 35, 45, 46, 113, 115
Counselman v. *Hitchcock*, 142 U. S. 547 ..... 189, 191
Dahnke-Walker Co. v. *Bondurant*, 257 U. S. 282 45
Dayton-Goose Creek Ry. v. *United States*, 263 U. S. 456 123
Dickson v. *Uhlmann Grain Co.*, 288 U. S. 188 46
Ellis v. *Interstate Commerce Commission*, 237 U. S. 434 191
Essgee Co. v. *United States*, 262 U. S. 151 189
Euclid v. *Ambler Realty Company*, 272 U. S. 365 28
Ex parte Milligan, 4 Wall. 2 126
Ex parte Siebold, 100 U. S. 371 169
Fawcus Machine Co. v. *United States*, 282 U. S. 375 171

Cases—Continued. Page

Federal Radio Commission v. *Nelson Brothers Bond & Mortgage Co.*, 289 U. S. 266 ..... 39, 154
Federal Trade Commission v. *American Tobacco Company*, 264 U. S. 298 191
Federal Trade Commission v. *Keppel & Bro., Inc.*, 291 U. S. 304 ..... 39, 156, 157
Field v. *Clark*, 143 U. S. 649 ..... 38, 41, 146, 167
Flint v. *Stone Tracy Co.*, 220 U. S. 107 ..... 44, 191
Florida v. *United States*, 292 U. S. 1 ..... 35, 46, 112, 123
Georgia Public Service Comm. v. *Atlantic Coast Line R. R. Co.*, 186 I. C. C. 157 112
Gibbons v. *Ogden*, 9 Wheat. 1 ..... 123, 124
Hale v. *Henkel*, 201 U. S. 43 189
Hammer v. *Dagenhart*, 247 U. S. 251 ..... 36, 41, 127, 128, 164
Hammond Packing Co. v. *Arkansas*, 212 U. S. 322 189
Hampton & Co. v. *United States*, 276 U. S. 394 .. 38, 41, 148, 166
Harriman v. *Interstate Commerce Commission*, 211 U. S. 407 . 191
Heisler v. *Thomas Colliery Co.*, 260 U. S. 245 46
Hill v. *Wallace*, 259 U. S. 44 128
Hipolite Egg Co. v. *United States*, 220 U. S. 45 163
Hoke v. *United States*, 227 U. S. 308 163
Home Building & Loan Association v. *Blaisdell*, 290 U. S. 398 ..... 49, 125, 126, 130
Hope Natural Gas Co. v. *Hall*, 274 U. S. 284 46
Houston, E. & W. Texas Ry. Co. v. *United States*, 234 U. S. 342 ..... 35, 45, 46, 121
Hygrade Provision Company v. *Sherman*, 266 U. S. 497 28
Interstate Commerce Commission v. *Goodrich Transit Co.*, 224 U. S. 194 ..... 43, 44, 167, 187, 191
In re Kollock, 165 U. S. 526 169
In re Rahrer, 140 U. S. 545 ..... 163, 169
Karr v. *Baldwin*, 57 F. (2d) 252 194
Kidd v. *Pearson*, 128 U. S. 1 46
Lemke v. *Farmers Grain Co.*, 258 U. S. 50 45
Levy Leasing Co. v. *Siegel*, 258 U. S. 242 125
Local 167 v. *United States*, 291 U. S. 293 ..... 45, 113
Loewe v. *Lawlor*, 208 U. S. 274 113
Mahler v. *Eby*, 264 U. S. 32 148
Massachusetts Mutual Life Ins. Co. v. *United States*, 288 U. S. 269 161
Matter of Harris, 221 U. S. 274 189
McCaughn v. *Hershey Chocolate Co.*, 283 U. S. 488 161
McGrain v. *Daugherty*, 273 U. S. 135 25
McMillan v. *Texas Railroad Commission*, 51 F. (2d) 400 ... 98
Minnesota v. *Blasius*, 290 U. S. 1 46
Minnesota Rate Cases, 230 U. S. 352 ..... 35, 45, 46, 121, 124
Muller v. *Oregon*, 208 U. S. 412 49
Mutual Film Corp. v. *Ohio Industrial Commission*, 236 U. S. 230 148

Cases—Continued.

	Page
Nebbia v. *New York*, 291 U. S. 502	37, 49, 128
New State Ice Co. v. *Liebmann*, 285 U. S. 262	49
New York Central Securities Corporation v. *United States*, 287 U. S. 12	39, 153, 154
Northern Securities Co. v. *United States*, 193 U. S. 197	35, 115
Norwegian Nitrogen Products Co. v. *United States*, 288 U. S. 294	40, 160, 171
Oliver Iron Mining Co. v. *Lord*, 262 U. S. 172	46
Olmstead v. *United States*, 277 U. S. 438	190
Peoples Petroleum Producers v. *Smith*, 1 F. Supp. 361	98
Philadelphia Co. v. *Stimson*, 223 U. S. 605	23, 28
Pierce v. *Society of Sisters*, 268 U. S. 510	28
Pugh v. *McCormick*, 14 Wall. 361	27
Railroad Commission of Wisconsin v. *Chicago, Burlington & Quincy Railroad Co.* 257 U. S. 563	123
Rupert v. *United States*, 181 Fed. 87	164
Second Employers' Liability Cases, 223 U. S. 1	124
Seven Cases v. *United States*, 239 U. S. 510	163
Schollenberger v. *Pennsylvania*, 171 U. S. 1	49
Southern Pacific Co. v. *Interstate Commerce Commission*, 219 U. S. 433	25
Southern Pacific Terminal Co. v. *Interstate Commerce Commission*, 219 U. S. 498	25
Stafford v. *Wallace*, 258 U. S. 495	34, 36, 45, 46, 111, 117, 120, 125
Standard Oil Co. v. *United States*, 221 U. S. 1	57
Standard Oil Co. (Indiana) v. *United States*, 283 U. S. 163	34, 85, 113, 117, 122
Sterling v. *Constantin*, 287 U. S. 378	82
Swift and Co. v. *United States*, 196 U. S. 375	45, 46, 120
Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420	111
Terrace v. *Thompson*, 263 U. S. 197	28
Texas Co. v. *Brown*, 258 U. S. 466	27
Texas & N. O. Ry. Co. v. *Brotherhood of Railway Clerks*, 281 U. S. 548	45
Thornton v. *United States*, 271 U. S. 414	163
Twining v. *New Jersey*, 211 U. S. 78	190
Union Bridge Co. v. *United States*, 204 U. S. 364	38, 146, 149, 169
United Mine Workers v. *Coronado Coal Co.*, 259 U. S. 344	115
United States v. *Brims*, 272 U. S. 549	113
United States v. *Chemical Foundation*, 272 U. S. 1	148
United States v. *Ferger*, 250 U. S. 199	35, 45, 112
United States v. *Grimaud*, 220 U. S. 506	38, 147, 149, 169
United States v. *Katz*, 271 U. S. 354	191, 192
United States v. *Louisiana*, 290 U. S. 70	123
United States v. *Patten*, 226 U. S. 525	34, 110
United States v. *Reading Co.*, 226 U. S. 324	45

Cases—Continued. Page

Utah Power & Light Co. v. *Pfost*, 286 U. S. 165 46
Watts, Watts & Company v. *Unione Austriaca &c.*, 248 U. S. 9 27
Wayman v. *Southard*, 10 Wheat. 1 ..... 38, 145
Weber v. *Freed*, 239 U. S. 325 163
Weeks v. *United States*, 232 U. S. 383 ..... 190, 191
Wilson v. *New*, 243 U. S. 332 ..... 36, 125, 126
Wilson v. *United States*, 221 U. S. 361 189

Statutes:

Agricultural Adjustment Act, c. 25, 48 Stat. 31 (U. S. C., Sup. VII, Title 7, Section 601–619) 152
Banking Act of 1933, c. 89, 48 Stat. 162 (distributed throughout U. S. C., Sup. VII, Title 12, cc. 2, 3, and 6; Title 15, Section 19 (a); Title 39, Sections 758, 759) 151
Emergency Railroad Transportation Act, c. 91, 48 Stat. 211 (U. S. C., Sup. VII, Title 49, Sections 5, 5a, 15a, 15b, 19a, 250–267) 152
Farm Credit Act of 1933, c. 98, 48 Stat. 257 (U. S. C., Sup. VII, Title 12, Sections 1131–1138f), and amendments throughout the Agricultural Marketing Act (U. S. C., Sup. VII, Title 12, Sections 1141a–1141g), and the Federal Farm Loan Act (U. S. C., Sup. VII, Title 12, Sections 678–1031) 151
Federal Emergency Relief Act of 1933, c. 30, 48 Stat. 55 (U. S. C., Sup. VII, Title 15, Sections 721–728) 152
Federal Employment Service Act, c. 49, 48 Stat. 113 (U. S. C., Sup. VII, Title 29, Sections 49–49l) 152
Federal Trade Commission Act, c. 311, Section 5, 38 Stat. 719 (U. S. C., Title 15, Section 45) 154
Home Owners' Loan Act of 1933, c. 64, 48 Stat. 128 (U. S. C., Sup. VII, Title 12, Sections 1461–1468) 152
Interstate Commerce Act, as amended, c. 91, section 1 (5), c. 91, 41 Stat. 474 (U. S. C., Title 49, Section 1 (5)) 154
National Industrial Recovery Act:
  Title I, c. 90, 48 Stat. 195 (U. S. C., Sup. VII, Title 15, Sections 701–712):
    Section 1 196
    Section 2 (a) 197
    Section 2 (b) 197
    Section 2 (c) 197
    Section 3 (a) 198
    Section 3 (b) 199
    Section 3 (c) 199
    Section 3 (f) 201
    Section 4 (b) 202
    Section 7 (a) 204
    Section 9 (c) 207
    Section 10 (a) 207

Statutes—Continued.
National Industrial Recovery Act—Continued. Page
Title II, c. 90, 48 Stat. 200 (U. S. C., Sup. VII, Title 40, Sections 401–414 152
Reconstruction Finance Corporation Act, amended, cc. 55, 72, 48 Stat. 119, 141 (U. S. C. Sup., VII, Title 15, Sections 605–605j) 151
Revenue Act of 1934, c. 277, 48 Stat. 766–767, Sections 604, 605 160
Securities Act of 1933, c. 38, 48 Stat. 74 (U. S. C., Sup. VII, Title 15, Sections 77a–77aa) 151
Sherman Act, c. 647, 26 Stat. 209 (U. S. C., Title 15, Sections 1–7) 114
Tennessee Valley Authority Act of 1933, c. 32, 48 Stat. 58 (U. S. C., Sup. VII, Title 16, Sections 831–831cc) 152
California Gen. Laws (Deering 1931), Vol. 2, Section 5636 (Rejected on referendum, May 3, 1931) 99
Oklahoma Sess. Laws 1915, c. 25 97
Texas Stat. (Vern. Supp. 1934) articles 6014, 6014a, 6029, 6049a, c, d 99
Miscellaneous:
American Association of Petroleum Geologists, Structure of Typical American Oil Fields (Symposium 1929) 62
American Economic Review, vol. 23, Supp. March 1933 (Stocking, Stabilization of the Oil Industry):
Page 55 66
Pages 56–57 70
Business Conditions Weekly, March 10, 1934 131
Cleveland Trust Company Business Bulletins, January 15, 1934 131
Congressional Record, vol. 78, pt. 3, page 3057 161
Department of Commerce, Bureau of Foreign & Domestic Commerce:
Petroleum Industry of the Gulf Southwest (1931), page 128 86
World Economic Review, 1933:
Page 84 130
Page 92 131
Page 101 131–132
Page 102 132
Page 107 132
Page 112 130
Statistical Abstract of the United States, 1933, page 357 133
Department of Commerce, Bureau of Mines:
Applied Methods and Equipment for Reducing Evaporation Losses of Petroleum and Gasoline (Bulletin 379, 1934), page 44 173
Mineral Markets Reports (No. M. M. S. 154, November 16, 1932) 52

Miscellaneous—Continued. Page

Department of Commerce, Bureau of Mines—Continued.
Mineral Resources of the United States, 1926, Part II:
Page 357 ... 75
Page 386 ... 81
Mineral Resources of the United States, 1931, part II:
Pages 584–585 ... 80
Pages 605–606 ... 81
Page 610 ... 93
Minerals Yearbook, 1932–1933, Statistical Appendix:
Pages 299–300 ... 50, 78, 85, 86, 139
Page 303 ... 51
Page 306 ... 49
Page 335 ... 66, 90, 91
Department of the Interior, Petroleum Administrative Board, Preliminary Report on a Survey of Crude Petroleum, Cost of Production for the Years 1931–1933:
Page 5 ... 67
Page 6 ... 70
Pages 10–33 ... 66, 67, 84, 92
Department of the Interior, press release, November 1, 1934 ... 53
Ely, Oil and Gas Conservation Statutes (Federal Oil Conservation Board) ... 100
Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board):
Page 13 ... 100, 101
Page 15 ... 102
Page 17 ... 97, 102
Pages 18–19 ... 102, 103, 104
Page 19 ... 103, 104
Page 20 ... 101, 103, 104
Page 21 ... 103, 105
Pages 22–24 ... 104
Page 23 ... 104
Page 161 ... 97
Page 164 ... 103
Page 165 ... 103
Page 215 ... 105
Page 261 ... 72, 103
Federal Oil Conservation Board:
Report I (1926) pages 8, 13 ... 76
Report II (1928) pages 3–9 ... 140
Report III (1929) page 21 et seq ... 61, 136–137
Report IV (1930) pages 6–7 ... 76, 77
Report V (1932) page 3 ... 94
Page 7 ... 139, 140
Pages 27–29 ... 137
Page 42 ... 172
Surveys of National Petroleum Requirements (1932) ... 72, 103

Miscellaneous—Continued. Page

Hearings, Federal Oil Conservation Board, May 27, 1926, pages 2–23 ... 102

Hearings, H. R. 5720, S. 1736, House Committee on Ways and Means, 73d Congress, 1st sess.:

Pages 73–81 ... 107
Pages 96–120 ... 107
Pages 97–98 ... 107
Pages 103–106 ... 93
Pages 109–111 ... 93
Pages 113–117 ... 93
Pages 118–119 ... 93

Hearings, S. 1712, H. R. 5755, Senate Committee on Finance, 73d Cong., 1st Sess.:

Page 43 ... 107–108
Pages 46–50 ... 107–108
Page 48 ... 99
Pages 140–160 ... 107
Page 168 ... 77
Pages 173–182 ... 107
Page 174 ... 91, 93
Page 177 ... 93
Page 178 ... 93
Page 179 ... 91
Page 182 ... 107
Pages 214–222 ... 107
Page 215 ... 93
Pages 241–251 ... 107
Page 242 ... 93
Page 243 ... 93
Pages 244–250 ... 91, 93
Page 247 ... 91
Page 261 ... 107
Pages 269–273 ... 107
Page 271 ... 93

Hearings, H. R. 7835, Senate Committee on Finance, 73d Cong., 2nd Sess. (Confidential), pages 121–126 ... 161

Hearings, on the Petroleum Code before the National Recovery Administration, vol. 2:

Pages 3003–3004 ... 85
Pages 3021–3024 ... 106–107
Page 3032 ... 92, 93

House Report No. 2192, 72nd Cong., 2nd Sess. (Report on pipe lines) map opposite—

Page viii ... 141
Pages ix–xii ... 61, 65, 68, 91, 136
Page x ... 137
Page xxiii ... 51
Page lviii ... 53
Page lxxi ... 54

Miscellaneous—Continued. Page

House Report No. 159, 73d Cong., 1st Sess., page 1 159
House Report No. 704, 73d Cong., 2nd Sess., pages 41–42 ... 161
Information Bulletin No. 639, of Car Service Division of American Railway Ass'n 132
Lilley, The Oil Industry (1925), pages 197–198 173
Marshall and Meyers:
Legal Planning of Petroleum Production, 41 Yale Law Journal:
Page 33 63
Page 36 ..... 64, 65
Pages 40–48 63
Pages 42–43 63
Pages 43–44 64
Pages 47–48 64
Legal Planning of Petroleum Production: Two Years of Proration, 42 Yale Law Journal, page 702 ..... 78, 98
Page 704 78
Pages 715–720 98
Miller, Function of Natural Gas in the Production of Oil (Cooperative Report by the Bureau of Mines and American Petroleum Institute), page 120 61
National Petroleum News:
October 2, 1929 (Uren, Influence of Delayed Development on Ultimate Recovery), page 65 68
August 12, 1931 (Oil Companies prepare for Court Battle on Enforced Shutdown), page 31 82
August 19, 1931 (Smith, Scramble for Crude as East Texas Output is Shut off under Martial Law), page 19 82
March 30, 1932 (Another "Compact" on Oil Talked, But Texas Merely Listens), page 25 105
June 1, 1932 (Holliday, Narrower Margins Essential), pages 25, 26 ..... 59, 60
May 10, 1933 (Crude Prices Drop Under Pressure of East Texas Situation), page 15 83
March 21, 1934 (Smith, The Panorama of Petroleum in the Mid-Continent), pages 31, 32 177
Oil and Gas Journal:
October 23, 1930 (Hardison, Yates Outstanding Proration Example), page 64 96
February 5, 1931 (Hearing before Senate committee), page 21 at page 98 94
February 5, 1931 (Egloff, Nelson, and Truesdell, Cracking Steadily Gaining in Importance), page 24 85
February 26, 1931 (Pogue, Economics of the Crude Oil Potential), page 25 77
March 26, 1931 (Holliday, Oil's Legal and Economic Handicaps), page 34 69

Miscellaneous—Continued. Page
Oil and Gas Journal—Continued.
July 16, 1931 (Score Sheet on Oil Production), page 28 104
December 22, 1932 (Bredberg, Shutdown in East Texas is Practically Complete and District Court Dismisses all Injunctions), page 33 82
January 12, 1933 (Willson, Price Reductions in Oklahoma Market Include Kerosene, Distillate, Fuels, and Gasoline), page 20 88, 89
January 26, 1933 (Bredberg, Year of Turmoil in World's Largest Oil Field), page 102 87
February 2, 1933 (Evidence of Big Overproduction and of Sales of Overproduced Oil in Oklahoma City), page 11 88
February 23, 1933 (Bredberg, Many Injunctions Granted in East Texas District; New Locations and Completions Decline), page 57 106
March 2, 1933 (Easy to Ship Illegal Oil Out of Oklahoma City, Witnesses Say, Who Admit Having Done It), page 11 88
March 2, 1933 (East Texas Crude Production and Shipments), page 32 87
March 9, 1933 (East Texas Crude Production and Shipments), page 32 87
March 9, 1933 (Spinney, Governor Shuts in Oklahoma City Field, Charging some Companies Greatly Overproducing), page 42 83, 88
March 30, 1933 (Rowley, Immediate Strengthening of Crude and Refined Oil Markets Expected as Result of Meeting), page 7 83, 87
March 30, 1933 (East Texas Crude Production and Shipments), page 32 87
April 13, 1933 (Bredberg, Renewed Hope for Proration in East Texas Area; Field Shut Down Awaiting Test of Key Wells), page 45 83
May 4, 1933 (Rowley, Wild Orgy in East Texas Brings Inevitable Cut; Voluntary Curtailment Elsewhere Suggested), page 7 83
May 18, 1933 (Bignell, Recent Orgy of Production in East Texas Field Has Definitely Shortened the Flowing Life), page 10 91
July 27, 1933 (McIntyre, Flush Fields and Illegal Oil Runs Responsible for Increased Crude Production), page 35 93
July 27, 1933 (Wilson, New Lows in Average Prices for Refined Products Established in the First Six Months of 1933), page 36 84
July 27, 1933 (Table of Prices for Refined Products), page 38 85

Miscellaneous—Continued. Page

Oil and Gas Journal—Continued.

September 7, 1933 (Swensrud, Balancing Supply and Demand of Petroleum), pages 12–13 ..... 67, 69

January 25, 1934 (Smiley, All Records Smashed in 1933 When Motorist Paid Only 12.76 Cents for His Motor Fuel), page 42 136

February 1, 1934 (Bredberg, Doom of East Texas Hot Oil Producer Sounded by Latest Federal Activity), page 32 176

August 23, 1934 (Engineering Era in Oil Production Practice Brought Many Improvements), page 233 .. 76

August 23, 1934 (Oil Discovered 1920–1934), page 237 . 75, 77

Oil Weekly:

May 15, 1933 (Reservoir Pressure Drops as East Texas Production Spree Continues), page 7 91

May 15, 1933 (Price Cuts Extend to Mid-Continent-Eastern Areas), page 33 83

February 26, 1934 (Reistle, East Texas Production), pages 14, 18 ..... 65, 66, 172

February 26, 1934 (Pogue, Balancing Supply and Demand in the Petroleum Industry), page 43 69

Osborn, Oil Economics (1932), page 30 78

Petroleum Development and Technology, American Institute of Mining and Metallurgical Engineers:

1931:

Allen (Control of California Oil Curtailment), page 47 96

Donoghue (Proration in Texas), page 67 98

Logan (Stabilization of Petroleum Industry), page 617 135

Swensrud (Economics of Distribution in the Petroleum Industry):

Page 604 ..... 59, 60, 86

Page 605 86

Page 608 86

Page 610 73

1932: Umpleby (Changing Concepts in the Petroleum Industry), pages 38, 41 137

1933: Struth (Petroleum Economics in 1932), page 51 . 88

1934: Umpleby (Efficient Utilization of Reservoir Energy), page 168 ..... 62, 137

Petroleum Facts and Figures (American Petroleum Institute, 4th ed. 1931), pages 111, 112 53

Pogue, Economics of Petroleum:

Pages 77, 145 ..... 137, 138

Page 212 60

Page 239 ..... 74, 75

Proceedings of 53d Annual Convention of American Federation of Labor, page 312 131

Miscellaneous—Continued. Page
Railroad Commission Texas, Oil and Gas Division, Monthly Production and Storage Report for East Texas Field:
February 1934:
Page 2 172
Page 6 173
Page 7 172
September 1934:
Page 3 173
Page 4 172
Page 9 55
Report of the President's Research Committee on Social Trends, Recent Social Trends in the United States, 1933, vol. 1, pages 89–90 140
Senate Document No. 61, 70th Congress, 1st sess. (Federal Trade Commission, Report on Petroleum Industry—Prices, Profits, and Competition):
Page 7 53
Page 51 58
Pages 99–101 53, 173, 179
Pages 101–107 59
Page 128 et seq 50
Page 129 75
Page 130 75
Page 142 85
Page 147 71
Page 148 75, 76
Pages 188–193 96, 97
Pages 206–211 56
Senate Document No. 124, 73d Congress, 2d sess. (National Income, 1929–1932):
Page 10 132
Page 14 132
Stern, That Commerce Which Concerns More States Than One, 47 Harvard Law Review, page 1335 (June 1934) 124
Summers, Oil and Gas:
Pages 385–423 64
Page 417 64
Swanson, E. B., Director of Petroleum Economic Division, United States Bureau of Mines and member of the Petroleum Administrative Board, affidavit 72, 103
Tariff Commission Report to the House of Representatives on Crude Petroleum and its Liquid Refined Products (Report No. 30, 2d series):
Page 155 70
Pages 157–163 67, 92

Miscellaneous—Continued. Page
Transcripts of records:
Champlin Refining Co. v. *Corporation Commission* (286 U. S. 210, no. 485) pages 279–280 97
Champlin Refining Co. v. *Corporation Commission* (286 U. S. 210, no. 122) pages 78–79 77
Sterling v. *Constantin* (287 U. S. 378), pages 90–93 82
United States Geological Survey:
Mineral Resources of the United States, 1915, part II, Petroleum in 1915:
Page 659 74
Page 665 75
Mineral Resources of the United States, 1918, part II, Petroleum in 1918, page 1070 75
Review of Petroleum Industry in the United States, April 1934 (circular no. 11):
Page 2 139
Pages 37–50 140
World Petroleum May 1930 (Thomas, The Law of Diminishing Returns), page 171 76

In the Supreme Court of the United States

OCTOBER TERM, 1934

No. 260

AMAZON PETROLEUM CORPORATION ET AL.,
petitioners,
v.
ARCHIE D. RYAN, S. D. BENNETT AND PHIL E. BAER

No. 135

PANAMA REFINING COMPANY ET AL., PETITIONERS,
v.
A. D. RYAN, S. D. BENNETT AND J. HOWARD MARSHALL

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS

OPINIONS BELOW

The opinion of the District Court for the Eastern District of Texas [1] is reported in 5 F. Supp. 639.

---

[1] No. 260, R. 149–171; No. 135, R. 149–171.

The opinions of the Circuit Court of Appeals for the Fifth Circuit [2] are reported in 71 F. (2d) 1, 8.

JURISDICTION

The judgments of the Circuit Court of Appeals were entered on May 22, 1934 (No. 260, R. 192; No. 135, R. 191). Petition for certiorari in No. 135 was filed June 20, 1934, and in No. 260 on August 6, 1934, and both petitions were granted October 8, 1934 (No. 260, R. 197; No. 135, R. 195).

Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

The following questions [3] are presented with respect to the production-control provisions [4] of the Code of Fair Competition for the Petroleum Industry (approved by the President under the National Industrial Recovery Act), which provide for the ascertainment by a Federal Agency of the national demand for crude petroleum, the allocation thereof

---

[2] No. 260, R. 180–192; No. 135, R. 178–190.

[3] As no substantial questions are presented in the *Panama* case (No. 135) not raised in the *Amazon* case (No. 260), and since the cause of action in both cases arose in the East Texas oil field, it is believed that it will save the time of the Court if one brief is submitted by respondents for both cases. Where a particular question is presented in only one of the cases that fact will be clearly indicated under the appropriate heading of the brief.

[4] The questions with respect to the Code of Fair Competition for the Petroleum Industry are presented only in No. 260 (the *Amazon* case).

equitably among the producing States and the subdivision into individual well quotas by a State of that part of the national demand assigned to it, and which make production in excess of quotas thus assigned by a State a violation of the code:

(1) Whether such provisions are a valid exercise of the power vested in Congress by the Constitution to regulate commerce among the several States and with foreign nations.

(2) Whether such provisions are in violation of the due process clause of the Fifth Amendment to the Constitution.

(3) Whether Title I of the National Industrial Recovery Act in authorizing the President to approve Codes of Fair Competition invalidly delegates legislative powers to the President.

(4) Whether the production-control provisions of the Code of Fair Competition for the Petroleum Industry are authorized by Title I of the National Industrial Recovery Act.

The following questions are presented with respect to Sec. 9 (c)[5] of the National Industrial Recovery Act, which authorizes the President to prohibit the transportation in interstate and foreign commerce of petroleum or its products produced or withdrawn from storage in violation of State law:

(5) Whether such prohibition is a valid exercise of the power vested in Congress by the Constitution

[5] In both of the cases the two questions with respect to Sec. 9 (c) are presented.

to regulate commerce among the several States and with foreign nations.

(6) Whether the authorization vested by this section in the President is an invalid delegation of legislative power.

The following questions are presented with respect to Regulations IV, V and VII [*] (promulgated under Sec. 10 (a) of the National Industrial Recovery Act to aid in the enforcement of Sec. 9 (c) of the Act), which require monthly reports from producers and refiners and the maintenance by them of books and records open to inspection, covering all transactions involving the production and transportation of petroleum and its products:

(7) Whether such regulations are authorized by Title I of the National Industrial Recovery Act.

(8) Whether they are valid exercises of the power vested in Congress by the Constitution to regulate commerce among the several States and with foreign nations.

(9) Whether they are in violation of the due process clause of the Fifth Amendment to the Constitution.

(10) Whether they violate the guarantee against self-incrimination contained in the Fifth Amendment to the Constitution.

(11) Whether they violate the guarantee against unreasonable searches and seizures contained in the Fourth Amendment to the Constitution.

---

[*] The validity of all three regulations is presented in No. 135 (the *Panama* case). The validity of Regulations IV and VII is presented in No. 260 (the *Amazon* case).

STATUTE, CODE PROVISIONS, AND REGULATIONS INVOLVED

The pertinent provisions of the Act of June 16, 1933, known as the National Industrial Recovery Act, and the Code of Fair Competition for the Petroleum Industry, and the pertinent Regulations are set forth in Appendix A, *infra*, pp. 196–228.[7]

STATEMENT

These cases came to the court below upon appeal by the respondents from decrees entered on February 21, 1934, by the United States District Court for the Eastern District of Texas (No. 260, R. 131–135; No. 135, R. 133–134). A number of causes were consolidated with each case (No. 260, R. 131–135; No. 135, R. 133–134). No. 260 will hereinafter be referred to as the *Amazon* case, and No. 135 as the *Panama* case.

In the *Amazon* case several owners and operators of oil-producing properties in the East Texas oil field filed a bill in equity on October 27, 1933, in the District Court of the United States for the Eastern District of Texas (No. 260, R. 1–15) against Archie D. Ryan, Special Agent of the Division of Investigations of the Department of the Interior in charge of the Tyler, Texas, office of said Division; S. D. Bennett, United States Attorney for the

[7] For the convenience of the Court the provisions of the Act, Code, and Regulations directly involved in these cases are also summarized and, in some instances, set forth in full in the statement (*infra*, pp. 7–18).

Eastern District of Texas; and Phil E. Baer, United States Marshal for said District, seeking to restrain them from enforcing Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry (hereinafter called the Petroleum Code) and Regulations IV and VII promulgated by the Secretary of the Interior in aid of the enforcement of Section 9 (c) of the National Industrial Recovery Act (hereinafter called the Recovery Act).[8] The bill contained allegations relating to numerous other provisions of the Code (No. 260, R. 8–9, 11), but at the trial of the case no evidence was offered by the complainants with respect to these provisions, and the decree entered by the District Court (No. 260, R. 131–135) was limited to Section 4 of Article III of the Petroleum Code and Regulations IV and VII.[9]

---

[8] In the same bill the complainants also sued to restrain the Railroad Commission of Texas, and other officers of that State, from enforcing orders issued by the Commission under the laws of Texas fixing the allowable production of oil for the entire State, and for each of the wells therein (No. 260, R. 1–15). This cause of action was severed from that against the Federal officers, and was tried before a statutory three-judge court (No. 260, R. 63–64, 133, 150), which upheld the orders of the Railroad Commission. *Amazon Petroleum Corporation* v. *Railroad Commission*, 5 F. Supp. 633.

[9] Although the bill of complaint and the decree of the District Court in the *Amazon* case did not in terms refer to the provisions of Regulation VII, the prayer for relief (No. 260, R. 15) and the decree (No. 260, R. 134) are sufficiently broad to include restraint of the enforcement of this Regulation. The Circuit Court of Appeals in its opinion in the *Amazon* case passed upon the validity of Regulation VII (No. 260, R. 182, 187, 190).

In the *Panama* case several producers and refiners in the East Texas oil field filed a bill in equity on October 23, 1933, in the District Court for the Eastern District of Texas (No. 135, R. 1–23) against Ryan and Bennett, and also against J. Howard Marshall, a Special Assistant to the Attorney General, seeking to restrain them from enforcing Regulations IV and VII, above referred to, and in addition, Regulation V, likewise promulgated by the Secretary of the Interior in aid of the enforcement of Section 9 (c) of the Recovery Act.

A brief description of the pertinent provisions of the Recovery Act, the Petroleum Code, and the Regulations will be helpful in clarifying the issues presented in these cases.

Pertinent provisions of the Recovery Act.—The Recovery Act, approved June 16, 1933 (c. 90, 48 Stat. 195), is entitled "An Act To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes." Title I is entitled "Industrial Recovery" and Title II (not material here) is entitled "Public Works and Construction Projects." Section 1 of the Act states:

> A national emergency productive of widespread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist.

This section then asserts the policy of Congress in enacting this Act to be as follows:

> It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

Section 2 (a), (b), and (c), entitled "Administrative Agencies", authorize the President to establish such agencies and to appoint such officers and employees as he may find necessary to effectuate the policy of Title I, to delegate any of his functions and powers under that title to such officers, agents, and employees as he may designate or appoint, and to establish an industrial planning and research agency to aid in carrying out his functions under that title, and provides that Title I shall

cease to be in effect, and any agencies established thereunder shall cease to exist at the expiration of two years after the date of the enactment of the Act, or sooner if the President shall by proclamation, or the Congress shall by joint resolution, declare that the emergency recognized by Section 1 has ended.

Section 3 is entitled "Codes of Fair Competition." Section 3 (a), pursuant to which the Petroleum Code was approved by the President, reads as follows:

> Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: ***Provided further,*** **That where** such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section

> shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion deems necessary to effectuate the policy herein declared.

Section 3 (b) declares that the provisions of a code approved by the President shall be the standards of fair competition for the trade or industry in question, and provides that any violation of such standards "in any transaction in or affecting interstate commerce" shall be deemed an unfair method of competition in commerce, within the meaning of the Federal Trade Commission Act.

Section 3 (c) vests the several District Courts of the United States with jurisdiction in equity to restrain violations of any code approved under Title I.

Section 3 (f) provides as follows:

> When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a

> misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

Section 9 (c) of the Act authorizes the President:

> to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. * * *

Violation of an order of the President issued under this provision is made punishable by fine of not to exceed $1,000, or imprisonment of not to exceed six months, or both.

Section 10 (a) authorizes the President to prescribe such rules and regulations as may be necessary to carry out the purposes of Title I and makes any violation of any such rule or regulation punishable by fine of not to exceed $500, or imprisonment of not to exceed six months, or both.

The foregoing are the only provisions of the Recovery Act directly involved in these cases.

Approval of the Petroleum Code.—On August 19, 1933, the President, pursuant to the authority conferred by Section 3 (a) of the Recovery Act, approved a Code of Fair Competition for the Petroleum Industry (Appendix A, *infra*, p. 208).

Article III of the Code provides in Sections 3, 4, and 5, as follows:

> SEC. 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry and thereupon Section 4 of this Article shall apply. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly. (As modified September 13, 1933.)
>
> SEC. 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 or Article III of this Code not be made within the State, or if the production of petroleum within any State ex-

ceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State, any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this Code. (As amended September 13, 1933, and September 25, 1934.)

SEC. 5. In any State in which no regulatory body or officer charged with the duty of allocating quotas within said State exists, and under the laws of which any person in any trade or industry within said State is required to comply with the terms of any Code of Fair Competition for such trade or industry approved under Title I of the National Industrial Recovery Act, the President may designate an agency within such State to compile quotas within said State. Such compilations, upon approval by the President, shall become operating schedules for the petroleum industry within said State.

> If any subdivision into quotas of production allocated to any such State shall be made within the State, any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this code; and, further, persons engaged in the petroleum industry or any branch thereof in any State, may adopt a supplemental code, for that State to be effective when approved by the President, covering any matter relating to the petroleum industry not in conflict with the provisions of this code.

By Executive Order of August 28, 1933, the President appointed the Secretary of the Interior to be the Administrator of the Petroleum Code and designated the Department of the Interior as the Federal agency provided for in the Code. (Appendix A, *infra,* p. 209.) As such Federal agency, the Department of the Interior has periodically estimated the amount of crude oil required to balance the national consumer demand, and has allotted the total among the producing States, including Texas.[10]

The Railroad Commission of Texas is the agency charged under the laws of that State with the duty of making allocations of production of crude oil to pools and wells within the State. The amount

---

[10] See Appendix A, *infra*, pp. 213–216, for orders estimating the national demand for September and October 1933, and making allocation thereof among the producing States.

allotted to the State of Texas was certified by the Department of the Interior to the Railroad Commission of Texas, which thereupon allocated the share of the national demand thus assigned to Texas to the individual wells within the State. As previously stated (*supra*, p. 6), the validity of the orders of the Railroad Commission of Texas was attacked by the complainants in the *Amazon* case and upheld by a statutory three-judge court. No appeal was taken from this decision and the time for appeal has expired.

Under the provisions of Section 4 of Article III of the Petroleum Code, production by any producer in Texas in excess of the quota thus assigned to him by the Railroad Commission of Texas is an unfair trade practice and a violation of the Code (*supra*, p. 13). It was the threatened prosecution by the Federal Government under the Recovery Act for violation of this section of the Code which the complainant producers in the *Amazon* case sought to enjoin.

Executive Order under Section 9 (c) and the Regulations.—On July 11, 1933, the President, pursuant to the power granted to him by Section 9 (c) of the Act, issued an Executive Order prohibiting the transportation in interstate or foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted by State law or valid regulation, or order prescribed thereunder. (Appendix A,

infra, p. 217.) On July 14, 1933, the President, pursuant to Section 2 (b) of the Act, delegated to the Secretary of the Interior all of the powers vested in the President for the purpose of enforcing Section 9 (c) of the Act and the Executive Order of July 11, 1933, "including full authority to designate and appoint such agents, and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary." (Appendix A, *infra,* pp. 217–218.)

On July 15, 1933, pursuant to the authority thus conferred upon him and under Section 10 (a) of the Act, the Secretary of the Interior promulgated certain rules and regulations. Regulations IV, V, and VII are directly involved in these cases.[11]

Regulation IV required certain monthly[12] reports from all producers of petroleum; Regulation V required similar reports from refiners, shippers, and purchasers, and Regulation VII required that such producers and refiners, *inter alia,* maintain

---

[11] These Regulations were amended on July 25, 1933, August 2, 1933, and August 21, 1933. They are summarized above as they read when these suits were instituted. By the order issued August 2, 1933, Regulation IV was suspended except in States or areas where producers are required by State proration laws to make monthly reports, and Regulation V was suspended except as to purchasers, shippers, or refiners of petroleum derived in whole or in part from the East Texas and Oklahoma City areas. (Appendix A, *infra,* p. 222.)

[12] The statement in petitioners' brief in No. 135 (p. 6) that *daily* reports were required under Regulations IV and V is in error.

records available for inspection by agents of the Division of Investigations of the Department of the Interior, covering all transactions involving the production and transportation of petroleum and its products.

Regulations IV and V provided, prior to recent changes [13] hereinafter referred to, in summary form as follows: [14]

Regulation IV.—Producers of petroleum shall file statements under oath before the 15th day of each month with the Division of Investigations of the Department of the Interior showing for the preceding calendar month the state allowable for each property and well; the actual daily production in barrels; the persons to whom petroleum was delivered; the quantity involved in each delivery, and the amount of all petroleum in storage at the beginning and end of the calendar month.

Regulation V.—Purchasers, shippers, and refiners of petroleum shall file statements under oath by the fifteenth of each calendar month with the Division of Investigations of the Department of the Interior showing, for the preceding calendar month, the place and date of all receipts and deliveries of petroleum, and the names of the persons from whom it was received or to whom it was de-

[13] These changes do not appear to be material to these cases (*infra*, pp. 23–26).

[14] For exact text of the Regulations as they read when these suits were instituted see Appendix A, *infra*, pp. 218–221.

livered; the amount received or delivered; the amount held in storage at the beginning and end of the calendar month; and such other detailed information necessary to identify the source of the petroleum or its products received, as may be required by the Division of Investigations of the Department of the Interior.

The reports required by Regulations IV and V at the time of the commencement of these suits were also to contain declarations on knowledge by producers and on information and belief by refiners that none of the petroleum produced or received had been produced or withdrawn from storage in violation of State laws, but this requirement was eliminated by an amendment made subsequent to the decision below. (*Infra*, p. 24.)

Proceedings in the courts below.—The bill in the *Amazon* case, as amended and supplemented (No. 260, R. 1–15, 54–58, 61–63), alleged, substantially, in the portions material here, that the complainants are producers of oil in the East Texas field; that the defendants have been demanding from them monthly reports (e. g. those required by Regulation IV, above described); are demanding that they produce from their wells only the amounts of oil permitted under the orders of the Railroad Commission of Texas; are making repeated inspection of their properties and gauging their tanks to ascertain the amount of oil produced by them, and have threatened to prosecute them criminally unless they

comply with the orders of the Railroad Commission of Texas fixing their quotas and furnish the reports required. The bill alleged that the Recovery Act, and particularly Section 9 thereof, exceeds the power of Congress under the Constitution; that it contains an invalid delegation of legislative power; and that it violates the Fourth, Fifth, Eighth, Ninth, and Tenth Amendments to the Constitution, and alleged, further, that the orders of the President and of the Secretary of the Interior under the Act, and the acts of the defendants, are not authorized by the Recovery Act.

The bill of complaint (No. 135, R. 1–23) in the *Panama* case alleged, substantially, that the complainants are a producer and a refiner in the East Texas field; that they are not engaged in interstate commerce, with the exception, as to the refiner, of that portion of its refined products which it ships to other States; that the defendants are demanding that the complainant producer furnish the reports required by Regulation IV and that the complainant refiner furnish the reports required by Regulation V and are demanding that the complainants keep open for inspection adequate books and records as required by Regulation VII, and that the defendants have threatened to prosecute the complainants criminally for failure to comply with these Regulations. The complaint also alleged that the defendants have come upon the property of the complainants by force and gauged their tanks and

dug up their pipe lines, and have otherwise interfered with their operations. The complaint alleged that Section 9 (c) of the Recovery Act exceeds the power of Congress under the Constitution and contains an unconstitutional delegation of legislative power, that the Regulations in question are in excess of the power of Congress to regulate interstate and foreign commerce, and that they violate the Fourth and Fifth Amendments to the Constitution.

The answers of the defendants, so far as material here, alleged, substantially, the validity of the Recovery Act, the pertinent provisions of the Petroleum Code, and the Regulations in question (No. 260, R. 15–54, 58–61; No. 135, R. 23–37). In the *Panama* case they deny entering upon the property of the complainants by force.

The *Panama* case came on for hearing on November 6, 1933, and the *Amazon* case on December 14, 1933. By stipulation it was agreed that evidence submitted by the parties in affidavit form upon these hearings for preliminary injunction should constitute the evidence upon which the court should finally determine the cases (No. 260, R. 63–64; No. 135, R. 131), and the issues were thereupon submitted to the court for decision upon the merits. The evidence thus submitted, so far as material to the issues presented in these cases, will be considered under the appropriate headings in the Argument.

On February 21, 1934, the District Court entered the decrees here in question. The decree in the *Panama* case (No. 135, R. 133–134) permanently enjoined the defendants from:

(1) "Enforcing any rule or regulation promulgated by the Secretary of the Interior or other designated agent under the National Recovery Act insofar as the same applies to the production of petroleum or the refining and storage thereof, or the transportation of petroleum or the products thereof in intrastate commerce"; and

(2) "Going upon or about the premises of complainants or in any wise interfering with them or molesting them in the conduct of their business by reason of the provisions of the National Industrial Recovery Act or regulations promulgated thereunder."

The decree in the *Amazon* case (No. 260 R. 131–135) permanently enjoined the defendants from:

(1) Enforcing or attempting to enforce against complainants, their agents, and employees, Section 4 of Article III of the Code of Fair Competition for the Petroleum Industry;

(2) Requiring from complainants, their agents, servants, and employees, the reports required under Regulation IV of the Rules and Regulations issued and promulgated by Harold L. Ickes, Secretary of the Interior, under Section 10 (a) of the National Industrial Recovery Act;

(3) Instituting any actions of a civil or criminal nature against complainants for violations of "the

aforesaid Code provisions and regulations above mentioned"; and from

(4) Going upon the property of complainants "under and by virtue of any authority conferred or attempted to be conferred upon said defendants by the aforesaid Code provisions and regulations above mentioned."

On March 17, 1934, the District Court filed its findings of fact and conclusions of law in both cases (No. 135, R. 134–138; No. 260, R. 135–139).

An appeal from both decrees having been taken by the defendants to the Circuit Court of Appeals for the Fifth Circuit, that court reversed the decrees and remanded the causes with directions to dismiss the bills (No. 260, R. 192; No. 135, R. 191).

The opinion of the Circuit Court of Appeals.— The Circuit Court of Appeals held in both cases that Section 9 (c) is valid and that the regulations thereunder are valid and enforceable against petitioners (No. 135, R. 178–190; No. 260, R. 180–192). In the *Amazon* case the court held that injunctive relief could not be had against the enforcement of Section 4 of Article III of the Code, because "an adequate remedy against abuse is afforded in the proceedings indicated by the statute [Sections 3 (b), 3 (c), and 3 (f)]" (No. 260, R. 188), although the court was also of the opinion that "the provision of the Code thus enforced [e. g., as provided in Sections 3 (b), 3 (c), and 3 (f)] does not appear to be unconstitutional" (No. 260, R. 188).

In view of the uncontroverted evidence establishing that petitioners in No. 260 (the *Amazon* case) were in danger at the time of the filing of the suit of criminal prosecution for violation of the Code provision (No. 260, R. 71–72, 182), the opinion of the court below, so far as it is based on the impropriety of injunctive relief, does not appear to be in accord with other decisions. See *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, 238; *Philadelphia Co.* v. *Stimson,* 223 U. S. 605, 621–622.

EFFECT ON THESE CASES OF RECENT CHANGES IN THE REGULATIONS AND THE CODE

As to the Regulations.—Since the decisions below were handed down, the regulations involved herein have been amended. The Government wishes to call the attention of the Court to these changes and their possible bearing upon these cases.

The Secretary of the Interior by an order dated July 20, 1934 (as amended by his order of July 24, 1934), amended the prior regulations promulgated by him to carry out the provisions of Section 9 (c) by substituting therefor new regulations insofar as future transactions are concerned. The new regulations are set forth in Appendix A, *infra,* pp. 223–228.

The new regulations embody substantially all the requirements of the three earlier regulations (IV, V, VII) under attack in these cases. The earlier regulations required monthly reports by producers of petroleum (Reg. IV), and by purchasers, shippers, and refiners of petroleum (Reg. V), contain-

ing certain data. The new regulations require such producers, purchasers, shippers, and refiners to keep and preserve the same and other data (Reg. V, A, B) and to file reports with the Secretary of the Interior from time to time, as called for by him [15] (Reg. VI). The only obligation imposed by the earlier regulations and not by the present ones was that the reports of producers, purchasers, etc., should contain a declaration that none of the petroleum which they have produced and shipped, or received and disposed of, was produced or withdrawn from storage in excess of the amount permitted by any State law or valid regulation or order prescribed thereunder. The provisions of the earlier regulations (Reg. VII) that all persons subject to Section 9 (c) and to regulations issued thereunder shall keep and maintain, available for inspection by the Department of the Interior, adequate books and records of all transactions involving the production and transportation of petroleum, are continued in force by the new regulations (Regs. IV and V).

A suit attacking the validity of an order by a Federal regulatory body does not become moot because of expiration of the order, where the order

---

[15] An order issued on the same day (July 20, 1934) that the new regulations were promulgated called for monthly reports from producers and refiners, *inter alia*, and approved forms for such reports (Appendix A, *infra*, p. 228). These forms require all of the information demanded by the earlier regulations (Appendix A, *infra*, following p. 228).

is a matter of public interest and is likely to be repeated or renewed. *Southern Pacific Terminal Co.* v. *Interstate Commerce Commission,* 219 U. S. 498, 514–516; *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, 452. See also *McGrain* v. *Daugherty,* 273 U. S. 135, 181–182. *A fortiori* the case is not moot where, as here, the order under attack is merely modified and substantially all of its pertinent provisions are continued in effect by the amending order.

Furthermore, the suit was brought to enjoin prosecution of past as well as future violations of the regulations (No. 135, R. 2, 9; No. 260, R. 15). Petitioners' liability for prior violations of the original regulations is still at issue in this case, since the new regulations promulgated by the Secretary on July 20, 1934, are substituted for the earlier ones only "insofar as future transactions thereby or hereby regulated are concerned" (Appendix A, *infra,* p. 223). In *Southern Pacific Co.* v. *Interstate Commerce Commission,* 219 U. S. 433, *supra,* which held that a suit to enjoin an order of the Interstate Commerce Commission fixing reasonable transportation rates did not become moot upon expiration of the order, the Court referred (p. 452) to "the possible liability for reparation to which the railroads might be subjected if the legality of the order were not determined."

Apart from the foregoing considerations, the validity of Section 9 (c) is an issue in these cases

not affected by the change in the regulations. The complaint in both cases alleged the invalidity of this section (No. 135, R. 3; No. 260, R. 12). The decree entered by the District Court in the *Panama* case enjoined the enforcement of "any rule or regulation promulgated by the Secretary of the Interior" under the National Industrial Recovery Act insofar as it applies to the production, refining, storage, or transportation of petroleum in intrastate commerce (No. 135, R. 133), and also enjoined interfering in any way with the conduct of petitioners' business by reason of the provisions of that Act "or regulations promulgated thereunder" (No. 135, R. 134). The Circuit Court of Appeals sustained the validity of Section 9 (c) (No. 135, R. 178–190; No. 260, R. 180–192), and one of the grounds upon which petitioners in both cases relied for the allowance of a writ of certiorari is that this holding is erroneous.

As to the Code provisions.—Prior to the allowance of the writ of certiorari in the *Amazon* case, the attention of the Court was directed to the omission of the second paragraph of Section 4 of Article III of the Code in the Executive Order of September 13, 1933, which made various modifications of the Code, and to the reinstatement of this paragraph as a part of the Code by Executive Order of September 25, 1934, certified copy of which was filed with the Clerk of this Court. (See Respondents' Memorandum and Supplemental Memoran-

dum in No. 260.) It was stated that the Government cannot and therefore does not intend to prosecute petitioners or other producers of oil in Texas, criminally or otherwise, for exceeding, at any time prior to September 25, 1934, the quotas of production assigned to them under the laws of Texas. But, as further stated, the Government does intend to prosecute petitioners or other producers if they produce or have produced in excess of such quotas after September 25, 1934.

The Government believes that the Court may, on the record in this case, consider and determine the validity of Section 4 of Article III, as thus amended by the Executive Order of September 25, 1934. See *Texas Co.* v. *Brown,* 258 U. S. 466, 474; *Pugh* v. *McCormick,* 14 Wall. 361, 374; *Watts, Watts & Company* v. *Unione Austriaca &c.,* 248 U. S. 9, 21; *American Foundries* v. *Tri-City Council,* 257 U. S. 184, 201. Both courts below considered the case on the assumption that the second paragraph of this section was a part of the Code. Moreover, the considerations bearing upon the validity of this paragraph are in no material respects now different from those existing at the time of the original adoption of the Code. Finally, petitioners have assumed during the entire course of this case that this paragraph had not been eliminated from the Code (see Pet. pp. 25–26) and have informed the Government that they desire the Court on this record to consider and determine the validity of this paragraph.

It is submitted that there is sufficient basis for jurisdiction in equity in this case to restrain the enforcement of the second paragraph of Section 4, if invalid, despite the fact that it has been operative only since September 25, 1934. See *Hygrade Provision Company* v. *Sherman,* 266 U. S. 497, 499–500; *Terrace* v. *Thompson,* 263 U. S. 197, 212, 214–216; *Philadelphia Company* v. *Stimson,* 223 U. S. 605, 620–621; *Pierce* v. *Society of Sisters,* 268 U. S. 510; *Euclid* v. *Ambler Realty Company,* 272 U. S. 365.

SUMMARY OF ARGUMENT

I

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE (ARTICLE III, SECS. 3, 4, AND 5) ARE VALID REGULATIONS OF COMMERCE AMONG THE STATES AND WITH FOREIGN NATIONS

Congress has plenary power under the Constitution to regulate commerce among the States and with foreign nations. This power is not confined to the regulation of transactions occurring in interstate and foreign commerce but extends to any and all kinds of activity which substantially burden or affect such commerce. The transactions subject to regulation by Congress may often include matters which the States may regulate, but if conflict should arise this Court has held that State law must yield to the paramount Federal power (*infra,* p. 46). The decision of this Court in *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S.

210, sustaining the power of the States to restrict production of oil, does not, therefore, preclude the exercise of Federal power, providing that conditions attending the production of oil are shown to have a direct and substantial effect upon interstate commerce in petroleum and its products.

The production-control provisions of the Petroleum Code seek to stabilize the interstate market in petroleum and its products through limitation of the production of petroleum to the national consumer demand. The Code provides for the ascertainment by a Federal agency of the national demand for petroleum and the allocation thereof equitably among the producing States. It is provided that those States, such as Texas, which have official agencies charged with prorating production, shall apportion the share of the national demand assigned to them among the individual wells and properties within the State. Production in excess of quotas assigned by a State is made a violation of the Code. The quotas involved in the *Amazon* case were assigned to petitioners under these provisions of the Code by the Railroad Commission of Texas, the agency charged with the administration of the conservation laws of that State.

A. The petroleum industry is an integrated unit, nation-wide in its ramifications; the great bulk of its products flow in a continuous stream in interstate and foreign commerce

The petroleum industry is national in scope and importance. Commerce in petroleum and its products is carried on between all of the States and between the United States and foreign nations.

At least ninety percent of the products of this industry is shipped into interstate and foreign commerce. The greater part of the nation's crude petroleum is produced in Texas, Oklahoma, California, and other Western States and is consumed in the centers of population in the East and Middle West. Crude oil produced in each of the eighteen producing States competes for the national market with crude from every other producing State, and there is a similar competition in the marketing of petroleum products between the many refining areas in the country. Practically all crude petroleum moves from the producing areas to market through great interconnected pipe-line systems extending across many States. In the course of the movement of oil from the well to the ultimate consumer, that portion of the oil or its products in intrastate commerce is physically commingled with that destined for other States.

A large portion of the industry is controlled by a number of major integrated companies whose activities extend throughout all branches of the industry and over many different States. Fierce competition prevails in the industry, particularly in the retail market. Because of the wide-spread activities of the integrated companies and the speed with which crude oil moves from the well to the consumer, the price structure of crude oil and its products is quickly responsive to conditions in nearly any branch of the industry or any section of the country.

B. The conditions under which petroleum is produced necessarily and directly have a substantial and injurious effect upon the interstate market price of petroleum and its products

A combination of singular geological, legal, and economic factors governing the production of crude oil in this country has compelled excessive production of oil. The fugitive nature of oil, when combined with the law of capture and the leasing system under which production of oil is carried on, has led to a wild race between the many separate operators in an oil field to capture as much oil as possible from their own and adjacent properties, regardless of the demands of the market. The rush to produce has been intensified by the cost advantage enjoyed by flush fields as against those of settled production and by the abnormally large production of the first wells drilled. Such excessive production has resulted in extreme declines in the price of crude oil and its products throughout the country. The law of supply and demand has, in this industry, failed to assert a corrective influence upon production; on the contrary, decline in price has accelerated production, with consequent further and further price declines. The inelastic nature of the demand for petroleum in recent years has been an aggravating factor in such price declines.

Prior to 1926 fear of a scarcity of oil and the increasing demand for petroleum products operated to some extent as a stabilizing influence upon the market. The discovery after 1926 of a series of

prolific new pools replaced fear of scarcity by knowledge of enormous excess capacity and caused the development of a potential production many millions of barrels in excess of current consumption. In 1931 and again in 1933 the interstate market in petroleum and its products, the stability of which had been continuously threatened since 1926 by the production from these new fields, was completely demoralized, primarily by reason of the excessive production of the Oklahoma City and East Texas pools. Production from these two fields broke the crude-oil price structure in every producing area in the country, driving prices far below the cost of production, and causing a parallel collapse of the price of refined products. The tremendous surplus stocks of crude oil and gasoline which were accumulated and the inelastic nature of the demand for gasoline led to vicious competitive excesses in the struggle between retail marketers for gallonage. The huge amounts of oil produced in violation of State law exerted a particularly depressing effect upon the interstate market because of the large discounts at which such "hot oil" or its products were offered for sale in interstate commerce.

Producers in the "stripper" or pumping well areas were drastically affected by the collapse of the price structure resulting from the excessive production of the flush fields. Prices in the "stripper" well areas were driven far below the

cost of producing oil from such wells, causing many of them to be abandoned, with the permanent loss of oil reserves. Cheap oil from the flush fields deprived many "stripper" well areas of their normal interstate and foreign markets and threatened to monopolize the entire market of most of the "stripper" well areas in the country. The "stripper" fields contain a large proportion of the total oil reserves of the nation; the shutting down of these fields would involve a serious loss of oil reserves.

C. The fruitless efforts of the industry and of the States to control the competitive conditions attending the production of oil demonstrate the interstate unity of the oil industry and the need for Federal control

The efforts of the industry and the States to control the production of oil have failed to prevent the collapse of the national market. The facility with which oil moves in interstate commerce from different sources of supply has made it impossible for proration to operate successfully as a local matter. Any field or State which refused to restrict production to a fair share of the national demand would merely absorb a part of the market of other fields or States which attempted such restriction. Efforts to coordinate the activities of the producing States upon a national scale proved unsuccessful. By the spring of 1933 both the industry and the States had come to realize that stabilization of the market could only be achieved by Federal control of production.

D. Under the decisions of this Court the production-control provisions of the Petroleum Code are a valid exercise of the commerce power of Congress

Unrestricted production from the flush fields has had a direct and substantial effect upon interstate commerce in petroleum and its products: (1) It has caused violent fluctuations throughout the country in the price of crude oil and its products, and (2) it has absorbed part of the market of the "stripper" well fields, thus diverting the normal flow of oil from the "stripper" areas. Such direct and substantial effects upon interstate commerce afford sufficient basis for the Federal control of oil production embodied in the Petroleum Code.

This Court has held that local activity which directly affects the price of commodities moving in interstate commerce may be regulated by Congress. *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1; *United States* v. *Patten,* 226 U. S. 525. See *Standard Oil Co. (Indiana)* v. *United States,* 283 U. S. 163, 169. Local acts, such as production or manufacture, which occur before interstate commerce has commenced, are nevertheless subject to the Federal commerce power when they directly affect interstate commerce. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *Standard Oil Co. (Indiana)* v. *United States, supra,* p. 169. Decisions of this Court have sustained regulations of local acts which affected interstate commerce much less directly than does the volume of oil produced in the flush fields. *Stafford* v. *Wallace,* 258 U. S.

495; *Colorado* v. *United States,* 271 U. S. 153; *Florida* v. *United States,* 292 U. S. 1; *United States* v. *Ferger,* 250 U. S. 199; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295.

In the Sherman Act Congress sought to prevent the exaction of monopoly prices from the consuming public, and it has been held that Congress had the power in carrying out this statutory purpose to prohibit local acts, including interruption of or restraint upon production, which affected interstate commerce directly or substantially. In the Recovery Act Congress adopted the view that interstate commerce required protection from overproduction or nonremunerative prices. These Acts thus represent different economic policies. But so far as concerns the kind of activity subject to Federal regulation there can be no difference in constitutional power because of the difference in economic policies. See *Northern Securities Co.* v. *United States,* 193 U. S. 197, 337.

The Federal Government may properly seek to protect the economic welfare of an industry which is predominantly interstate. Where, as in the case of the oil industry, regulation of the purely interstate aspects of the business cannot be accomplished without control of local acts, such as production, regulation of such local acts is within the Federal commerce power. *Minnesota Rate Cases,* 230 U. S. 352; *Houston, E. & W. Texas Railway Co.* v. *United States,* 234 U. S. 342. This Court has

recognized that the practical course of interstate business has expanded with the growth of the country. *Stafford* v. *Wallace, supra,* pp. 518–519. With the development of industries organized on a national scale and the extraordinary increase in the facilities of transportation, regulation of many intrastate aspects of such industries may be necessary for the protection of interstate commerce.

The purpose of Congress in the Recovery Act was to remove obstructions to interstate and foreign commerce resulting from the general industrial depression. See *Wilson* v. *New,* 243 U. S. 332, 348. The evident purpose of the Act is sufficient to distinguish it from the child labor law involved in *Hammer* v. *Dagenhart,* 247 U. S. 251, in which this Court found that Congress was not attempting to regulate interstate commerce, but was in fact seeking to control the social policies of the States.

II

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE REASONABLE REGULATIONS DESIGNED TO ACHIEVE PROPER OBJECTIVES OF THE FEDERAL GOVERNMENT, OF VITAL CONCERN TO THE NATION; THEY DO NOT, THEREFORE, INVOLVE ANY INFRINGEMENT OF THE RIGHTS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

The Fifth Amendment does "not prohibit governmental regulation for the public welfare", but demands only that the law shall not be unreasonable and that the means selected shall have a real relation "to the object sought to be attained."

Nebbia v. *New York,* 291 U. S. 502, 525. The end sought by the Recovery Act was to free interstate and foreign commerce from obstructions brought on by a grave industrial emergency requiring prompt remedial measures. The formulation of codes of fair competition provided for in the Act, permitting simultaneous action with respect to many industries, was a reasonable and well-adapted means of regulating the hundreds of trades and industries whose activities had so injuriously affected the free flow of interstate commerce.

The petroleum industry was in particular need of immediate remedial measures because of the complete collapse of its market structure resulting from overproduction in the flush fields. The severe decline in prices had brought about tremendous wastes of oil. Such wastes were of vital national concern because of the limited supply of this important irreplaceable natural resource upon which agencies of transportation depend for an economic supply of fuel, as does the nation in time of war.

The Petroleum Code was adopted by the industry and approved by the President in order to carry out, with respect to this industry, the purposes of Congress declared in the Recovery Act. It was sought through control of production to restore stability to the market as a means of eliminating wastes and other abuses resulting from a demoralized market. The production-control provisions of the Code are reasonable regulations having a "real

and substantial relation to the object sought to be attained." *Nebbia* v. *New York, supra,* p. 525.

The Court has sustained the power of the States to restrict production to market demand as against the claim, analagous to that now made by petitioners, that such restriction involved a violation of the due process clause of the Fourteenth Amendment. *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210.

III

THE AUTHORIZATION BY CONGRESS OF THE PRESIDENT TO APPROVE CODES OF FAIR COMPETITION IS NOT AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWERS

The extent to which Congress is permitted to delegate authority must be determined essentially by the necessities of practical administration. The emphasis upon practical considerations in determining whether a Congressional delegation of authority is constitutional is found in each of the leading decisions of this Court. *Wayman* v. *Southard,* 10 Wheat. 1; *Field* v. *Clark,* 143 U. S. 649; *Buttfield* v. *Stranahan,* 192 U. S. 470; *Union Bridge Co.* v. *United States,* 204 U. S. 364; *United States* v. *Grimaud,* 220 U. S. 506; *Hampton & Co.* v. *United States,* 276 U. S. 394.

The magnitude of the subject regulated in the Recovery Act, the need for speed and flexibility in carrying out the statutory purpose, and the emergency situation confronting Congress in the spring of 1933, made it essential that a delegation such as

is embodied in the Recovery Act be employed. It would have been impossible for Congress to prescribe detailed regulations applicable to trades and industries generally. Moreover, the attempt at such legislation would have delayed other measures which the public welfare demanded. Congress was confronted with the alternative either of not legislating effectively or of making a broad delegation.

The phrase "fair competition" in the Recovery Act is given substance and meaning by the context in which it is used. See *New York Central Securities Corporation* v. *United States,* 287 U. S. 12, 24, 25; *Federal Radio Commission* v. *Nelson Bros. Bond & Mortgage Co.,* 289 U. S. 266, 285. This phrase, construed in the light of the purposes set forth in Section 1 of the Recovery Act and given expression in other sections of the Act, establishes just as intelligible a standard as the expressions "unfair methods of competition", "public interest", "public necessity and convenience", and "just and reasonable" found in other statutes which have uniformly been sustained by this Court.

IV

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE AUTHORIZED BY THE RECOVERY ACT

Production in excess of quotas assigned by a State agency pursuant to the provisions of the Petroleum Code is "unfair" (*Federal Trade Commission* v. *Keppel & Bro., Inc.,* 291 U. S. 304) and

concerns "competition" and may, therefore, be prohibited in a code of fair competition approved under the Recovery Act. The competition of industrial concerns may extend to any step in the industrial process, including production of raw materials. This is particularly so in the case of the oil industry. Various provisions of the Recovery Act evidence the intention of Congress that codes should contain regulation of production where necessary to carry out the purposes of the Act. The consistent administrative construction of the Act also supports the conclusion that code provisions regulating production are authorized. Such a construction of the Act by those charged with administering it "will not be overturned except for very cogent reasons." *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315. Congress has, in effect, ratified the restriction of production contained in the Petroleum Code, since it subsequently enacted a statute taxing the sale and processing of crude oil, a secondary purpose of which was to assist Federal officers in enforcing the code provisions regulating production.

V

SECTION 9 (C) OF THE RECOVERY ACT IS CONSTITUTIONAL.

A. Section 9 (c) is within the commerce power of Congress

Section 9 (c) authorizing the President to prohibit transportation in interstate and foreign commerce of oil or its products produced or withdrawn from storage in violation of State law is a valid

regulation of interstate commerce. The transportation in interstate commerce of "hot" oil or its products contributes to harmful results, both in the States where "hot" oil is produced and the States to which it is transported. Prohibition of the use of interstate commerce as an instrumentality for the promotion of violation of State laws, or for the furtherance of injurious or harmful results in other States, has been consistently upheld. *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311; *Brooks* v. *United States*, 267 U. S. 432; *Champion* v. *Ames*, 188 U. S. 321. The statute involved in *Hammer* v. *Dagenhart*, 247 U. S. 251, is clearly distinguishable from Section 9 (c), since (1) no showing was made in *Hammer* v. *Dagenhart* that the transportation there prohibited produced harmful results in other States, and (2) Section 9 (c) clearly operates in aid of State laws and cannot, therefore, be regarded as invading the power of the States.

B. Section 9 (c) is not an unconstitutional delegation of legislative authority

The President's discretion under this section is limited to determining when the prohibition shall take effect. Delegations of this character have uniformly been upheld. *Hampton & Co.* v. *United States*, 276 U. S. 394; *Field* v. *Clark*, 143 U. S. 649. The general policies and purposes of the Recovery Act, of which Section 9 (c) is an integral part,

govern the President's determination of the time or times during which the prohibition against the transportation of "hot" oil shall be applied.

VI

THE REGULATIONS HERE IN QUESTION ARE IN ALL RESPECTS VALID AND CONSTITUTIONAL

A. The requirement of monthly reports from producers (Reg. IV) and refiners (Reg. V) and the maintenance by them of books and records open to inspection (Reg. VII) is authorized by Section 10 (a) of the Recovery Act as necessary to the enforcement of Section 9 (c).

The enormous extent of the East Texas field, the intricate gathering and pipe-line systems in the field, the large number of wells and operators, the intermingling of legal and illegal oil in the course of transportation from the field, and the numerous devices employed to conceal illegal operations make it impossible, as a practical matter, to detect movements in interstate commerce of "hot" oil or its products by ordinary policing methods. The only practicable and effective means of tracing the movement of "hot" oil in interstate commerce is by a complete system of reports from all persons handling oil from the well to the interstate carrier.

Reports from all producers in the field are essential since they alone can report facts concerning the legality of their production. It is impossible to distinguish between producers, and to require reports only from those whose oil moves in inter-

state commerce. Producers cannot ordinarily know either the immediate or ultimate destination of their oil. Eighty-five percent of the oil from the field flows eventually into interstate and foreign commerce and every well in the field contributes to this stream of commerce to some extent.

Reports from all refiners in the field are likewise essential in order that it may be determined whether the products which they ship into interstate commerce were manufactured from "hot" oil. Most, if not all, refineries in the field ship part of their products in interstate commerce. The refineries in East Texas constitute the principal outlet of illegal petroleum from the field.

The requirement that books and records be maintained open to inspection is a necessary means of checking the accuracy of the reports. The reporting system, supplemented by the inspection of books and records, serves not only to detect actual violations of Section 9 (c) but also to deter future violations.

B. The regulations impose no burden or inconvenience. They are clearly not unreasonable, arbitrary, or capricious.

C. Although the regulations require information as to intrastate transactions, they do not exceed the power of Congress under the commerce clause, since the information sought is necessary to the enforcement of Section 9 (c), a valid regulation of interstate commerce. *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194.

D. The regulations do not violate the prohibition against unreasonable searches and seizures in the Fourth Amendment nor the privilege against self-incrimination in the Fifth Amendment. The language and history of these amendments and the decisions of this Court make it clear that these constitutional guarantees were not intended to apply to such matters as the filing of reports or the keeping of books for inspection as incidental to the enforcement of a regulatory statute. *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Baltimore and Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612; *Interstate Commerce Commission* v. *Goodrich Transit Co., supra; Chicago Board of Trade* v. *Olsen*, 262 U. S. 1. The reports and inspections provided for are not merely preliminary steps in the preparation of court action against the persons subject to the regulations. Reports of those complying with the law aid in detecting violations by others without in any way incriminating the former.

ARGUMENT

I

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE (ARTICLE III, SECS. 3, 4, AND 5) ARE VALID REGULATIONS OF COMMERCE AMONG THE STATES AND WITH FOREIGN NATIONS

The commerce clause of the Constitution, as this Court has frequently stated, vests Congress with complete and plenary power to regulate commerce among the several States and with foreign nations.

This Court has said that "the power to regulate commerce is the power to enact 'all appropriate legislation' for its protection and advancement * * *; to adopt measures 'to promote its growth and insure its safety' * * *; 'to foster, protect, control, and restrain.'" *Texas & N. O. R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548, 570.

The full scope of this power has been affirmed by this Court in many cases, and it is now settled law that this power is not confined to the regulation of transactions occurring in interstate and foreign commerce, but extends to any and all kinds of activity which substantially burden or affect such commerce (*Swift & Co.* v. *United States,* 196 U. S. 375; *Minnesota Rate Cases,* 230 U. S. 352; *Houston, E. & W. Texas Ry.* v. *United States,* 234 U. S. 342; *Stafford* v. *Wallace,* 258 U. S. 495; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1) even though such activity is in itself not commerce at all (*United States* v. *Ferger,* 250 U. S. 199; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295). Moreover, it is immaterial whether the activity has occurred wholly within a State before movement in interstate commerce has commenced. *Local 167* v. *United States,* 291 U. S. 293; *United States* v. *Reading Co.,* 226 U. S. 324; *Dahnke-Walker Co.* v. *Bondurant,* 257 U. S. 282; *Lemke* v. *Farmers Grain Co.,* 258 U. S. 50; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295.

The transactions thus subject to regulation by Congress may often include matters which may also

be regulated by the States within their police power or taxed locally. In such cases, if the state regulation does not burden interstate commerce or in any way conflict with the Federal law, both Federal and State regulations may be in force at the same time. Compare *Bacon* v. *Illinois,* 227 U. S. 504, and *Dickson* v. *Uhlmann Grain Co.,* 288 U. S. 188, with *Chicago Board of Trade* v. *Olsen, supra; Minnesota* v. *Blasius,* 290 U. S. 1, with *Stafford* v. *Wallace, supra; Oliver Iron Mining Co.* v. *Lord,* 262 U. S. 172, with *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295. If conflict should arise, however, or if Congress has manifested any intention completely to occupy the field, this Court has held that State law must yield to the paramount Federal power. *Minnesota Rate Cases, supra; Houston, E. & W. Texas Ry.* v. *United States, supra; Florida* v. *United States,* 292 U. S. 1; *Adams Express Co.* v. *Croninger,* 226 U. S. 491. "The rule which marks the point at which state taxation or regulation becomes permissible" does not necessarily prevent "interference by Congress in cases where such interference is deemed necessary for the protection of commerce among the States." *Swift and Co.* v. *United States, supra,* p. 400; *Stafford* v. *Wallace, supra,* p. 525. Such cases as *Kidd* v. *Pearson,* 128 U. S. 1, *Heisler* v. *Thomas Colliery Co.,* 260 U. S. 245, *Oliver Iron Mining Co.* v. *Lord, supra, Hope Natural Gas Co.* v. *Hall,* 274 U. S. 284, *Utah Power and Light Co.* v. *Pfost,* 286 U. S. 165, and *Chassaniel* v. *Greenwood,* 291 U. S. 584, which define the

permissible limits of action by the States, are, therefore, not applicable.

Thus the power of the States under their police power to restrict the production of oil (*Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210) does not preclude the exercise of Federal power over the same subject matter if the conditions surrounding the production of oil afford a reasonable basis for the view that Federal control of petroleum production is necessary for the regulation of interstate commerce in petroleum and its products.

The production-control provisions of the Petroleum Code (Article III, Sections 3, 4, and 5, *supra,* pp. 12–14) have for their primary purpose the stabilization of the interstate market in petroleum and its products through the limitation of production of crude petroleum to the amount necessary to meet the national consumptive demand for petroleum products. This demand, once ascertained, is apportioned equitably among the States (Article III, Section 3). As large a measure of control as is possible is left to the States themselves. Thus it is provided that the subdivision into quotas within a State of the share of the national demand assigned to it is to be made within the State (Article III, Section 4). No provision is made for Federal determination of quotas within a State unless the States themselves fail to establish such quotas (Article III, Sections 4 and 5), or unless production within a State exceeds the share of the national de-

mand assigned to it (Article III, Section 4). Under these provisions the quotas under which the petitioners in the *Amazon* case operate have been assigned to them, not by the Federal Government, but by the State of Texas through its administrative agency, the Railroad Commission. The Petroleum Code, in effect, adopts the quotas thus assigned and makes production in excess of such quotas a violation of the Code (Article III, Section 4, second paragraph).

This case thus squarely presents the issue as to whether the Federal Government may, under the commerce clause, regulate the amount of oil produced throughout the nation. The determination of this issue depends essentially upon questions of economic fact involving a consideration of the structure of the petroleum industry, the conditions governing the production of oil, and the effect of such conditions upon interstate commerce in petroleum and its products.

A. The petroleum industry is an integrated unit, nation-wide in its ramifications; the great bulk of its products flow in a continuous stream in interstate and foreign commerce

National scope and importance of the industry.[16]—The petroleum industry is nation-wide in

---

[16] In this and other parts of the brief citation is made to material not included in the record. All of the non-record citations are to published material falling into two main classes:

(1) Publications of Federal agencies: House and Senate Reports and Documents; hearings before Senate and House Committees; publications of the Federal Oil Conservation

scope. It is the third largest industry in the Nation (R. 79),[17] representing a capital investment of from twelve to fifteen billions of dollars (R. 79, 83), and engaging the services of over a million employees (R. 79). Crude petroleum is produced in substantial quantities in eighteen States (R. 79; Department of Commerce, Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 306). In these States there are approximately 325,000 wells, located on over four million acres of land,

---

Board; statistical publications of the United States Bureau of Mines and other Federal agencies.

(2) Publications of non-Federal agencies: Reports of the Railroad Commission of Texas; publications of the American Institute of Mining and Metallurgical Engineers and numerous trade journals of general use in the oil industry.

These publications contain matters of common knowledge to persons familiar with the oil industry and are generally regarded as reliable sources of information concerning this industry. The Government believes that the nonrecord material referred to in this brief may properly be considered by the Court in determining whether a reasonable basis exists for the provisions of the Recovery Act, the Petroleum Code, and the Regulations here in question. See *Muller* v. *Oregon*, 208 U. S. 412, 419; *New State Ice Co.* v. *Liebmann*, 285 U. S. 262, 286–287 (dissent); *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 16; *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 422, 444; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 10–15; *Nebbia* v. *New York*, 291 U. S. 502; *Burns Baking Company* v. *Bryan*, 264 U. S. 504, 514, 519; *Schollenberger* v. *Pennsylvania*, 171 U. S. 1, 10.

Some of the above-described material is referred to or quoted in the brief proper. Excerpts from some of the more important sources cited are reprinted in a separately printed appendix to the brief.

[17] The record references under Point I of this brief are to the record in No. 260 (the *Amazon* case), which alone involves the validity of the code provisions.

and there are about five hundred refineries and 325,000 marketing outlets employed in the industry (*Id.*, p. 299; R. 83). Commerce in petroleum and the products into which it is refined is carried on between all the States in the United States, and between the United States and foreign nations (R. 79). The United States consumes about 63 percent of the world's total supply of petroleum, and produces 60 percent of the world's total production, producing 785,000,000 out of 1,311,000,000 barrels in 1932.[18]

Interstate commerce and competition between producing areas.—Crude oil produced in each State competes for the national market with crude from every other producing State (Senate Document No. 61, 70th Cong., 1st Sess. (Federal Trade Commission, Report on Petroleum Industry, Prices, Profits, and Competition), p. 128 *et seq.*). At least 90 percent of the petroleum and its products produced in the United States is shipped into interstate and foreign commerce, and is produced with the expectation that it will be so shipped (R. 80). Ninety-five percent of the nation's crude oil is produced in Texas, California, Kansas, Oklahoma, Louisiana, and in the States bordering the

[18] The United States in 1932 consumed 835,482,000 barrels out of a total world production of 1,311,377,000, or 63.7 percent of the total. (Department of Commerce, Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, pp. 299–300.) In 1932 the United States produced 59.9 percent of the total. (*Id.*)

east of the Rocky Mountains (R. 83), and a substantial part of this crude oil is brought to the large consuming areas in the East where it is refined (R. 83). The products thus manufactured enter into competition with those refined from crude oil produced in the Eastern States (R. 92). Mid-Continent crude oil is transported by pipe line to Pennsylvania, Ohio, and Indiana, where it is similarly refined and the products placed in competition with those refined from the crude produced in such States (R. 92).

In 1932 out of a total production of crude oil of 781,845,000 [19] barrels only 41,500,000 were produced in States east of the Mississippi, whereas California, Oklahoma, and Texas together produced over 84 percent of the total, and Texas alone produced over 311,000,000 barrels (R. 93). In that year 300,000,000 barrels of domestic crude, or 38 percent of the total production, were refined in the States east of the Mississippi, which area has 70 percent of the population of the country and of the automobile registration (R. 93). The northeastern States alone consume about 36 percent of the total petroleum products (R. 83).

In 1932 Texas delivered 46 percent of the crude produced by it to States east of the Mississippi (R.

[19] The figures for 1932 in the Record were based upon preliminary Bureau of Mines reports made early in 1933. The final figures, which differ only slightly, are found in Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 303, since published.

93). It produced 22 percent of the total gasoline refined in the United States, of which it delivered 80 percent to other States (R. 93). Approximately 85 percent of the crude oil and its products produced in Texas moves into interstate and foreign commerce (R. 84, 111, 117), and almost every producer and refiner in Texas contributes to this stream of commerce to some extent (R. 84).

Dependence upon oil of agencies of commerce.—All agencies of transportation require the products of this industry for fuel or lubrication. All of the millions of automobiles, trucks, buses, and airplanes, and a large proportion of railroads and ships use petroleum products for fuel, as does a great deal of the installed horsepower of the United States (Bureau of Mines, Mineral Market Report (No. M. M. S. 154, November 16, 1932),[20] Appendix B, p. 11).

Movement of petroleum in interstate commerce—the pipe-line system.—Practically all petroleum normally passes in a continuous movement from the underground source of supply to market through great interconnected pipe-line sys-

---

[20] Virtually the entire production of gasoline, the principal product of crude petroleum, is consumed by motor vehicles. Almost one-half of the fuel and gas oil, the next largest derivative of crude petroleum, is consumed by railroads, steamships, and United States Navy and Army transports, which in 1931 consumed 150,000,000 out of a total of 356,000,000 barrels distributed in the United States in that year (Bureau of Mines, Mineral Market Reports (No. M. M. S. 154, November 16, 1932), Appendix B, p. 11).

tems. When crude oil leaves the ground it generally passes into temporary storage tanks near the wells, from which it passes into gathering pipe-line systems serving the field (R. 79, 114–117; Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 99, Appendix B, p. 9; Petroleum Facts and Figures (American Petroleum Institute, 4th ed. 1931), pp. 111, 112). The great bulk of the crude then moves into connected trunk pipe-line systems, which carry it to major refinery centers or to ocean terminals for transshipment by tanker (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 7, Appendix B, p. 4; House Report No. 2192, 72nd Cong. 2nd Sess. (Report on Pipe Lines), Map opposite p. lviii, Appendix B, p. 45). In some instances the oil moves from the gathering lines to loading racks for railroad distribution or to refineries located in or near the field, but the great bulk of the oil is transported though the major trunk pipe lines.[21] The interconnected character and the extent of the pipe-line network is graphically illustrated by the map contained in the Report on Pipe Lines, *supra,* which appears in Appendix B at page 45. From this it appears that several pipe lines extend in an arc

[21] The report of the Bureau of Mines for September 1934 (Department of the Interior, Press Release, November 1, 1934) shows that of 72,148,000 barrels total deliveries, 53,304,000 were by pipe line, 16,596,000 by ship, and 2,248,000 by railroad or truck. A large proportion of the oil shipped by vessel was delivered to the coast through pipe lines.

across the country from Texas, northeasterly through Oklahoma, Kansas, Missouri, and Illinois, and then due easterly through Indiana, Ohio, Pennsylvania, and New Jersey (R. 116). Lines from Wyoming, Louisiana, and Arkansas connect with this main trunk-line system (R. 116). In Texas and Oklahoma there is a network of lines, large and small, joining the main trunk lines to the north, and others leading down to tidewater on the Gulf coast (R. 116). California has its own system linking its fields with the refineries at tidewater (R. 116).

Of the 73 major pipe-line companies 21 are engaged exclusively in interstate commerce (R. 114; Report on Pipe Lines, *supra,* at p. lxxi). Those pipe lines engaged in both intrastate and interstate transportation have both operations so intermingled that it is impossible to separate them; in many operations the same pipe lines and pumping equipment are used for transporting oil both in interstate and intrastate commerce; and frequently oil originating in a given pool will move through the same pipe line in both interstate and intrastate commerce, part being delivered locally and the rest in interstate commerce. (R. 114, 115.)

Movements from East Texas.—There are thirteen pipe lines transporting crude oil from the East Texas field to various parts of the United States (R. 116). It is apparent from the map referred to above that the great bulk of the petroleum

from this field moves through pipe lines north into the Mid-Continent market, or south to Lousiana and Texas Gulf ports, from which it is shipped to the East Coast markets.[22] Even that portion of the crude oil moving to refineries located in the East Texas field is not out of the stream of interstate movement; although a small part of the products of oil moving to these refineries, chiefly gasoline, may be consumed locally, the major portion of the products actually move into interstate commerce (R. 117).

Intermingling of crude oil in inter- and intrastate commerce.—It is apparent that after oil leaves the well it is impossible to ascertain the ultimate destination of the crude oil, or of the many products which will ultimately be refined from it (R. 80). Some part of practically all crude petroleum is moved into interstate commerce in one continuous process. As soon as crude leaves the well for the storage tanks that portion destined for intrastate commerce is mingled with the larger portion destined to move in interstate commerce, and it is further commingled when it passes into the gathering pipe lines of the field and thence into the

[22] In September 1934, 38,080 barrels of crude were shipped by rail, 12,710,753 by pipe line, and 2,157,261 barrels were refined in the East Texas field (Railroad Commission of Texas, Oil and Gas Division, Monthly Production and Storage Report for East Texas Field (September 1934), p. 9 (Appendix B, p. 181).

trunk pipe lines or to the refineries near the field, or to truck, rail, or water carriers (R. 79, 80).

Intermingling of petroleum products in inter- and intra-state commerce.—A similar commingling of interstate and intrastate commerce in petroleum occurs after the crude oil has been processed at the refineries into its various byproducts. These, of which gasoline is the most important, are transported by pipe line, railroads, tankers, and trucks to jobbers, distributors, and retailers located in every city and village and on every highway in the country. As a practical matter, it is nearly impossible to separate strictly interstate transactions from those intrastate in nature, "because the whole is so interrelated that it can truthfully be said that the petroleum business is a national one whose bounds go beyond state lines" (R. 84, 79, 80).

Interstate competition in petroleum products.—Just as crude oil from nearly every producing state competes with crude produced in the other states (*supra,* pp. 50–51) so is there wide-spread competition between the many refinery areas [23] in the country in the sale and distribution of petroleum products. (See Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at pp. 206–211.) Gasoline sold in Ohio may come from the flush fields of East Texas through pipe line and boat; from the Mid-Continent fields of Oklahoma and Kansas or

[23] See map from Report on Pipe Lines, *supra*, Appendix B, p. 45, showing location of the refineries.

from Michigan by pipe line or railroad; from the "stripper" well areas of Pennsylvania, Ohio, Kentucky, or Tennessee by railroad or truck. The Chicago market likewise may be serviced from the distant and widely separated areas of the older producing states and the new Mid-Continent and Texas fields. On the East Coast gasoline produced in the East may compete with gasoline from the Mid-Continent and the Gulf Coast and with gasoline brought by tankers from California. Likewise fuel oil, lubricants, and distillates leave the refineries in search of nation-wide markets in competition with commodities from competing refineries and areas in the United States and abroad.

Corporate integration of the industry.—The national unity of the industry is greatly increased by the form of its corporate organization. The structure of the industry has changed since this Court compelled the dissolution of the Standard Oil Monopoly in *Standard Oil Co.* v. *United States,* 221 U. S. 1. Instead of one monopolistic company there are now many competing integrated units, each of which produces, refines, transports and markets its products in a great many States (R. 83, 115; Report on Pipe Lines, *supra,* at p. xxiii *et seq.*). About twenty integrated companies, whose activities encompass the entire industry, produce approximately 50 percent of all crude oil produced, control 63 percent of the refining capacity and 90 percent of the pipe-line systems, and own, lease, or control

the greater part of the market outlets [24] (R. 83, 115). The oil produced by an integrated company is transported over the company's own pipe lines to its own refineries, sometimes located in another state, where it is placed in temporary storage until refined (R. 115). After refining it is moved to the distributing stations of the company and sold either to wholesalers or to the ultimate consumer (R. 115). From the moment the oil reaches the surface of the well until it arrives at the company's bulk plants or places of ultimate consumption, it is in a continuous current of interstate commerce, about 80 percent of all oil produced being sold ultimately in states other than that in which it is produced (R. 115).

There is the fiercest sort of competition throughout the industry, particularly in the retail trade (R. 83). Competing with the major integrated companies are a number of minor integrated companies and many semi-integrated companies engaged only in production and refining, or refining and marketing, and a host of completely independent non-integrated producers, refiners, and marketers. (See Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 51.)

---

[24] "In 1924 the gasoline production of 46 integrated companies reporting to the commission was 172,201,000 barrels, or 80.7 percent of the United States total; in 1925 they produced 200,780,000 barrels, or 77.3 percent of the total; and during the first half of 1926 their production was 108,413,000 barrels, or 75.9 percent of the total." Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 51.

The integrated companies, in addition to producing their own oil, purchase the crude produced by many individuals and nonintegrated producing companies who usually have no storage or pipe-line facilities of their own (R. 116; Federal Trade Commission, Report on the Petroleum Industry, etc., *supra,* at pp. 101–107). Unless restricted in their production the integrated companies can produce all of their crude requirements from their own wells, thus destroying the market of many small independent producers (R. 81). Moreover, the large integrated companies are better able to weather price fluctuations than the small producers, refiners, or marketers (R. 85). Conditions in the East Texas oil field have shown that uncontrolled production leads to monopoly and hardship to small producers (R. 81, 85).

Sensitivity of market structure.—Crude petroleum and its chief derivative, gasoline, have an extremely sensitive market structure, because of the facility with which crude oil moves through the highly developed agencies of transportation and the speed with which it may be converted into its products and delivered to the ultimate consumer. (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Swensrud, Economics of Distribution in the Oil Industry), p. 604, Appendix B, p. 52; National Petroleum News, June 1, 1932 (Holliday, Narrower Margins Essential), p. 25, 26, Appendix B, pp. 56–58.) The operations of the integrated

companies extending over many States intensifies the sensitivity of the market structure. Activity in any branch of the industry or in any section of the country directly affects the economic condition of the integrated companies operating in the same trade area, and is quickly reflected by reason of the closely integrated nature of their operations[25] in all other branches of the industry and all other sections of the country in which they operate (R. 80). Because of the interrelationship of the different branches of the industry, fluctuations in the price structure of gasoline in any retail market of the country quickly work through the refinery market to the price of crude oil, and back on the price structure of the entire nation. (See Swensrud, *supra,* and Holliday, *supra,* Appendix B, pp. 49–59.) Production of petroleum in any area in excess of what that area's normal outlets can absorb quickly breaks the price structure of crude, and that of the refinery markets of the entire nation, and produces chaotic conditions in retailing (Holliday, *supra,* Appendix B, pp. 56–58).

The stabilization of this extremely sensitive interstate market in petroleum and its products and, through such stabilization, the accomplish-

---

[25] "Today we find the marketing of oil, with its preparatory steps of transportation and refining, to be a closely integrated enterprise, handling tremendous volumes of products, through diverging and ramifying channels of distribution of a unique and singularly efficient character." Pogue, Economics of Petroleum, p. 212.

ment with respect to this industry of the objectives of the Recovery Act, was the end sought by the production-control provisions of the Petroleum Code. Based upon the conclusion that the conditions under which oil has been produced exert a direct and substantial effect upon this interstate market, the Petroleum Code seeks to regulate these conditions through restricting the production of crude oil to the amount required to meet the national consumptive demand for petroleum products. That the control of production provided for in the Petroleum Code is essential for the protection of the interstate market of the oil industry will appear from a consideration of the conditions governing the production of oil and the course of the industry in recent years.

B. The conditions under which petroleum is produced necessarily and directly have a substantial and injurious effect upon the interstate market price of petroleum and its products

A combination of singular geologic, legal, and economic factors operate in the production of crude oil in this country. Because of the national scope of the business, these factors have been reflected throughout the United States.

Geologic factors.[26]—This Court has taken notice of the geology of oil pools in *Bandini Co.* v. *Su-*

[26] See Report on Pipe Lines, *supra*, at p. ix, Appendix B, pp. 20–21; Federal Oil Conservation Board, Report III (1929), p 21, Appendix B, pp. 92–95; Miller, Function of Natural Gas in the Production of Oil (Cooperative report by the Bureau of Mines and American Petroleum Institute),

perior Court, 284 U. S. 8, 16, and in *Champlin Refining Company* v. *Corporation Commission,* 286 U. S. 210, 228. Crude oil is produced by piercing the cap rock of the domelike structure under which petroleum is found confined under high pressure (R. 79). It is usually associated with natural gas and water which act as propulsive agents in causing both a horizontal and vertical movement of oil through the porous-rock structure and up to the surface through whatever wells release the native pressure of the reservoir. Oil is fugitive in nature, and may be brought to the surface through wells drilled in various parts of the pool, with the result that one well drains from all parts of the reservoir (R. 79). Excessive and uncontrolled production causes premature exhaustion of the native pressure of the reservoir and diminishes the amount of oil ultimately recoverable. See *infra,* pp. 91, 136–137.

The migratory nature of oil whereby oil under the land of one operator may be brought to the surface through a well drilled on the land of another, differentiates competition in the production of petroleum from virtually all other mining operations (R. 79). In other extractive industries, one operator may compete for and capture another's market, but he does not thereby capture more of

---

p. 120; American Association of Petroleum Geologists, Structure of Typical American Oil Fields (Symposium 1929); Petroleum Development and Technology, 1934, American Institute of Mining and Metallurgical Engineers (Umpleby, Efficient Utilization of Reservoir Energy), p. 168.

the mineral itself nor diminish the ultimate recovery of that mineral. Wherever conservation laws have not existed, or have not been enforced, the fugitive nature of oil has led to a wild race between the many separate property owners in a field to capture as much oil as possible from their own and adjacent properties (R. 80, 93, 95).

Legal factors—the law of capture and the leasing system.[27]—The so-called "law of capture" and the leasing system under which oil is almost universally developed have combined to compel wasteful competitive production, regardless of the needs of the market. By virtue of the "law of capture" competitive drainage by a neighboring operator taking from a common source of underground supply can "nowhere be enjoined or checked by the recovery of damages, however clear the damage. Pleas for judicial protection against the efforts of neighboring producers to exhaust the common reservoir have been met with the admonition of 'Go thou and do likewise'." (Marshall and Meyers, *supra,* at pp. 42–43; see *Barnard* v. *Monongahela Natural Gas Co.,* 216 Pa. 362, 365.) An equally specialized property law governing oil and gas leases has intensified the excesses of this competition. Because of the speculative nature of the enterprise, the production of oil is ordinarily carried on under leases

[27] For a discussion of the law of capture and the leasing system, see Marshall and Meyers, Legal Planning of Petroleum Production, 41 Yale Law Journal, pp. 33, 40–48.

whereby a landowner grants an oil operator the right to drill for oil on his land in consideration of the operator's covenant to pay the lessor a royalty if, as, and when oil is produced. The lessor's desire to realize on his bargain has led him to exact covenants compelling immediate and rapid drilling and diligent and continuous operation after discovery, and where such covenants have been omitted the courts have been quick to imply them. (Marshall and Meyers, *supra,* at pp. 43–44; see Summers, Oil and Gas, pp. 385–423.) While the more recent leases frequently contain provisions which permit the operator to delay the drilling of a discovery well upon the payment of "delay rental", the lessee under such a lease has not escaped the duty, both expressed and implied, of protecting the lease against drainage by drilling and producing offset wells the moment any nearby operator makes a discovery in any part of the structure under lease (Marshall and Meyers, *supra,* at pp. 47–48; Summers, *supra,* at p. 417.)

Competitive drilling and production.—The location of wells has necessarily been determined by the property lines of the surface, regardless of subsurface contours or of the demands of the market (Marshall and Meyers, *supra,* at p. 36). The bringing in of a discovery well in any new field has invariably precipitated an intensive drilling campaign throughout the field. Wells are located on small tracts and as close to property lines as possible for "the recognized purpose of draining as

much oil as possible from neighboring lands" (*Ibid;* Report on Pipe Lines, *supra,* at p. xii, Appendix B, pp. 26–27). Neighboring operators "are forced to counter with an off-set well on their side of the boundary line" (Marshall and Meyers, *supra,* at p. 36). From then on off-set follows off-set until the outermost limits of the field have been drilled (Report on Pipe Lines, *supra,* at p. xii). In the East Texas field alone, from whence this case arises, the prod of this kind of competition has resulted in 12,000 new wells in the short space of three years and in the teeth of a constantly rising surplusage of oil. See Oil Weekly, Feb. 26, 1934 (Reistle, East Texas Production) p. 14.[28] A twen-

[28] The growth of the East Texas field is described in this article as follows (p. 14):

> The East Texas field, the largest developed oil field in the world, is located in Smith, Rusk, Gregg, Upshur, and Cherokee Counties, Tex. The discovery well, drilled by C. M. Joiner, was completed on September 8, 1930, and is located approximately 7 miles north of the city of Henderson and near the eastern limit of the field. Within less than 1 year the new field became the predominant factor in the petroleum industry. On August 16, 11 months after the completion of the discovery well, there were 1,644 wells producing 584,475 barrels of oil per day. At this time, August 16, 1931, the field was placed under military control and production completely stopped until September 6, 1931. January 29, 1934, there were 12,170 producing wells in the field and approximately 70 new wells are being completed each week. Present average well spacing is approximately one well to 9.5 acres. Of the 12,179 wells, 1,702 are classified as marginal wells and allowed to produce 20 barrels per day, the remaining 10,468 wells are allowed to produce 5 percent of their 1-hour potential. The total allowable production for the field, January 29, was 399,095 barrels.

ty-acre spacing program was attempted, but small tracts and the necessities of off-setting led to over 5,000 exceptions, and today the field average is one well to each nine and one-half acres. (*Ibid.*, at p. 18.) Even a single recalcitrant operator has it in his power to set the pace of competition in spacing, drilling, and production in an entire field. In no other industry does property law thus conspire to force competition regardless of the market outlet for the product and of the total ultimate recovery from the sources of supply.

Economic factors—cost advantage of flush fields.—In the new fields of production the natural pressure of the reservoir is often sufficiently great to bring the oil to the surface without human intervention, but in some new fields, and in all fields after the natural pressure has been depleted, it is necessary to use pumps to lift the oil (R. 79, 90, 100–101). These pumping or "stripper" wells produce often as little as one-half barrel of oil a day. (R. 92; Bureau of Mines, Mineral Yearbook, 1932–1933, Statistical Appendix, p. 335, Appendix B, p. 49). The wells in the flush fields, because they do not require pumping, enjoy a temporary but tremendous cost advantage as against the fields of settled production in which the "stripper" wells are located.[29] (23 American Economic Review,

[29] Costs ranged from as low as 17.8 cents a barrel in the Kettleman Hills Field to $2.13 for West Virginia in 1932 (Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, *infra*, Appendix B, pp. 68–91). In

Supp. March 1933 (Stocking, Stabilization of the Oil Industry) p. 55; U. S. Tariff Commission Report to the House of Representatives on Crude Petroleum and its Liquid Refined Products (Report No. 30, 2d Series) pp. 157–163, Appendix B, pp. 60–65; Department of the Interior, Petroleum Administrative Board, Preliminary Report on a Survey of Crude Petroleum, Cost of Production for the Years 1931–1933, pp. 5, 10–33, Appendix B, pp. 67–91.) Unlike most other industries, in which lower costs result from increased efficiency, low cost oil springs from the chance discovery of new flush fields, where the wasteful use of the natural propulsive forces of the reservoir lifts the oil to the surface at a temporarily negligible cost (Oil and Gas Journal, Sept. 7, 1933 (Swensrud, Balancing Supply and Demand of Petroleum), pp. 12–13). This economic cost advantage, operative only during the flush period of the well, has intensified the urge of operators, already driven on by the geologic and legal factors previously described, to drain as much oil as possible from the underground reservoir.

Economic factors—large production of first wells drilled.—The competitive race to drill and produce is spurred on further by the abnormally large production gained by the first wells drilled. The high initial reservoir energy, which is responsible for

---

1930, individual field variations ranged from 6 cents to $4.84 (U. S. Tariff Commission, Report on Crude Petroleum, etc., *infra*, at pp. 157–163, Appendix B, pp. 60–65).

98810A—34——6

the large production of the early wells, is rapidly dissipated by these wells, causing a permanent diminution of pressure in the entire field, so as not only to decrease the ultimate recovery of other and later wells, but to increase the cost of securing that recovery. (Report on Pipe Lines, *supra,* at pp. x–xii, Appendix B, pp. 22–27; National Petroleum News, Oct. 2, 1929 (Uren, Influence of Delayed Development on Ultimate Recovery), p. 65.[80]) Therefore all operators rush to early and large production.

Effect of geologic, legal, and economic factors—excessive production and depressed prices.—The peculiar conditions governing the production of oil,

---

[30] In this article it is stated (p. 65):

> Maximum ultimate recovery of petroleum from an oil field by ordinary methods of flowing and pumping is secured only by systematic and timely drilling of wells, thus deriving the greatest benefit from the relatively high initial gas pressure. The time at which a well is drilled, in terms of surrounding development, determines to an important degree the amount of oil that it will ultimately produce.
>
> Delay of only a few months in offsetting a neighboring well may mean that 50 percent or more of the potential production of the later-drilled well will be left in the sand, unrecoverable by ordinary methods. Probably no single factor is of greater importance in determining the efficiency of recovery by ordinary well-production methods.
>
> Maximum recovery of oil from a "pool" requires prompt and complete development of the entire oil-bearing area once the discovery well has entered upon its productive life; and in areas where there has been considerable delay in bringing the land to complete development we may expect to find a high percentage of residual oil. The operator who fails to maintain the pace set by his neighbors, or who is unable to finance the rapid development of his property, not only loses some of his oil to his more active neighbors but also leaves in the sand oil which neither he nor

which have been described, have resulted in the excessive production of every newly discovered field (R. 88, 93, 95, 105) and have brought about extreme declines in the price of crude oil (R. 88, 105). The cost advantage accruing to operators in flush fields as against those in "stripper" well areas has enabled the former to continue to operate at a profit though the price be driven to extremely low levels. The law of supply and demand has in this industry utterly failed to exert a corrective influence upon production (R. 76; Oil and Gas Journal, March 26, 1931 (Holliday, Oil's Legal and Economic Handicaps) p. 34; Oil and Gas Journal, Sept. 7, 1933 (Swensrud, Balancing Supply and Demand of Petroleum) pp. 12–13; Oil Weekly, Feb. 26, 1934 (Pogue, Balancing Supply and Demand in the Petroleum Industry) p. 43). On the contrary, decline in price has accelerated production with consequent further and further price declines. The major investment in the production of oil occurs in the drilling of the well, and thereafter the cost of production in flush fields remains substantially constant regardless of how much oil is produced.[31]

---

his neighbors may secure; oil that is left in the sands gas-drained and without motivating force to bring it into the wells. The oil producer who merely protects his boundaries by offsetting neighboring line wells, leaving his interior locations to be leisurely drilled in later years, likewise suffers a loss of a large part of the potential production that his wells might have secured had the entire property been fully developed at an earlier date.

[31] Actual operating costs apart from drilling and prospecting expenses and general overhead were only 20.7 cents per

Price declines have therefore impelled operators in the flush fields to produce even more oil in order to maintain their income (23 American Economic Review, Supp., March 1933 (Stocking, Stabilization of the Oil Industry) pp. 55, 56–57 [82]). The pres-

---

barrel out of a total average cost per barrel for the country of 80.6 cents from 1931 to 1933 (Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, *supra*, at p. 6). From 1927 to 1930 the average operating cost was 25 cents out of a total cost of $1.07. (Tariff Commission Report on Crude Petroleum, etc., *supra*, at p. 155.)

[82] In this article it is stated (pp. 56–57):

> A second economic characteristic of oil production is that capacity once called into being is driven into complete utilization by the irresistible forces of competition. This is the result of two factors: The fixed character of the investment in oil production, and the migratory nature of the mineral product. Oil production is an industry of relatively large fixed costs. The major investment is made in the process of drilling a well. It is an investment of a highly specialized sort. Once made, it can neither be withdrawn nor utilized for other than the purposes for which originally designed. This economic fact, coupled with the physical and geological character of an oil deposit—the disposition of oil to move through the pores of the underground rock once the equilibrium of the pool has been disturbed by the puncturing drill, and to move without regard to property lines on the surface—necessitates under a competitive regime production at maximum well capacity. As long as a well will flow under its natural pressure, it must be permitted to produce regardless of the price of oil. Any return on the original investment is better than none. Since oil is migratory, should an individual operator choose to curtail or cease production awaiting a better price for the product, it is for the benefit of a competitor on an adjoining tract who will reduce the fugacious mineral to possession. Even in the case of pumping wells, once the pumping facilities have been installed, it pays to operate them at maximum capacity as long as interest on purely liquid capital,

sure of all of these conditions has inevitably forced the price of crude oil to lower and lower levels.

Inelastic demand for petroleum.—These price declines have been aggravated by the relatively inelastic demand for crude oil. Demand for crude oil and its products is an indirect one depending upon the desire to use the machinery and the vehicles in which petroleum products are consumed. (Federal Trade Commission, Report on the Petroleum Industry, etc., *supra,* at p. 147.[33]) The de-

---

which represents but a small part of total investment, can be secured.

In the light of its economic and geological characteristics, then, the oil industry promises to be recurringly plagued with overproduction. Paradoxically, oil may continue to be produced when it does not pay to produce it. The neat principles of theory are borne out by the stubborn facts of history. Despite continuous overproduction during the past decade, the speculative drive has persistently forced new capacity into existence; this has inevitably been translated into increasing annual output in the face of mounting stocks and a sharp downward trend in prices.

[33] In the report it is stated (p. 147):

SECTION 5. *Consumption of gasoline—General nature of the demand for gasoline.*—Gasoline has quite a rigidly fixed minimum demand in the field of its chief use as a motor fuel so that the price may increase considerably without any proportionate reduction in consumption, or price may be reduced without a proportionate increase in consumption. This is true for several reasons: (1) because gasoline has become a necessity to the millions of owners and operators of passenger cars, motor trucks, motor busses, motor boats, tractors, stationary and portable engines, and other internal-combustion engines; (2) because the chief demand for gasoline, that of a motor fuel, is dependent upon the demand for automobiles and other motor vehicles; (3) because the cost of gasoline is a small part of the total cost of operating an auto-

mand depends not on salesmanship nor to any great extent upon price, but rather upon other economic variables, such as general prosperity and the number of automobiles in use (R. 76). So inelastic is this demand that the Federal Oil Conservation Board and the United States Bureau of Mines have been able, through the drastic fluctuations in the price of oil and gasoline during the past five years, to forecast within a small margin of error the national demand for crude oil by translating the forecasted demand for gasoline into its crude-oil equivalent every six months.[34]

---

mobile or other motor vehicle; and (4) because there is no commercially available substitute for gasoline at as low a price as has prevailed for gasoline. In addition to the uses enumerated above, gasoline, or naphtha, is used quite extensively (1) in the manufacture of varnishes, (2) as a solvent for rubber and other manufactures, and (3) in the dry-cleaning business. By far the largest factor in the rapid increase in the domestic consumption of gasoline has been the increased use of motor vehicles.

[34] See Federal Oil Conservation Board, Surveys of National Petroleum Requirements; affidavit of E. B. Swanson, Director of Petroleum Economics Division, U. S. Bureau of Mines, and member of the Petroleum Administrative Board, explaining the method of determining the national demand, Appendix B, pp. 184–201. (This affidavit was introduced in evidence by respondents at the trial before the District Court of the *Amazon* case (No. 260) but was not included in the record on appeal to the Circuit Court of Appeals. Counsel for petitioners in No. 260 have stipulated with the respondents that this affidavit may be presented for consideration by this Court.)

In Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), the accuracy of forecasts made from 1930 to 1933 is described as follows (p. 261):

Parallel declines in price of gasoline.—The overproduction of crude oil with the consequent declines in its price has necessarily resulted in parallel declines in the price of gasoline, its chief derivative, both because of the cheapness of the raw material and the excessive amount of gasoline refined from it and placed upon the market. (See Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Swensrud, Economics of Distribution

---

Since 1930 the Federal Oil Conservation Board has published six periodic surveys by volunteer economic committees which aimed at forecasts of demand, recommendation of refinery runs, and estimates of crude oil production. In only the last two (one now current, and its predecessor) has a rate of production been recommended, as distinguished from a prediction. The forecasts of demand, equated back to total crude consumption, have never been less than 95½ percent accurate; one was 99.25 percent correct, and the latest (save the current one), the most difficult because it recommended crude oil production rather than predicted it, was 97.5 percent accurate. All of these forecasts start with an estimate of gasoline demand and work back to crude oil production; demand for other products will be satisfied automatically by refining enough crude to yield the required gasoline. These forecasts have been made in the face of many uncertain factors. This two and a half year period has been one of depression, of diminishing use, and of wide fluctuations of imports. The wholesale gasoline price has varied between a minimum of less than 2.5 cents and a maximum of over twice that; and crude prices have ranged between a "low" of 10 cents and less, and a "high" 10 times as great. Six months or nine months have been covered by each survey. No State has been obliged to accept or follow the published figures. Under these conditions the accuracy of the work gives some indication of what can be done in forecasting the demand side of the equation, without requiring a fixed price as a basis for the determination.

in the Oil Industry), p. 610, Appendix B, pp. 52–53.) Such a decline has occurred in both the wholesale and retail gasoline markets (*Ibid*). The wholesale or refinery prices of gasoline are, of course, the prices at which gasoline is sold in the interstate market.

Excessive production and price trends prior to 1926.—The effect of the competitive conditions attending the production of crude oil upon the interstate market price of crude and its products has attained its fullest intensity within comparatively recent years. Even from the earliest days of the history of the industry, however, these competitive conditions had time and again exerted a demoralizing effect upon the price structure of this industry throughout the nation. The opening up of new large fields of production has almost invariably been characterized by declines in the price of crude oil within a very short time (R. 88, 105). The Spindletop Field in Texas in 1902, the Glen Pool in Oklahoma in 1906, the Lakeview gusher field in California in 1910 (R. 105), and to a more considerable extent the Cushing Field in Oklahoma in 1913 were followed by severe price reductions. Production in the Cushing Field in 1914 caused a market "decline which affected every type of high-grade oil produced in the United States and caused a decided curtailment of activity in practically every [other] oil field in the country" (United States Geological Survey, Mineral Resources of the United States, Part II, Petroleum in 1915, p. 659; Pogue, Eco-

nomics of Petroleum, p. 239). This field, however, was rapidly depleted [35] (Pogue, Economics of Petroleum, p. 239) and a steady rise in the price of oil followed until in March, 1920 Mid-Continent crude was selling as high as $3.50 per barrel.[36] (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 129.) This rise in price was accentuated by the absence of new discoveries of extensive oil fields with the resultant fear of shortage of supply which became so pronounced during the War that people were requested not to use their automobiles on "gasless Sundays" in order to preserve the supply for military purposes (*Id.,* at p. 148). In 1920–1921 new fields were discovered in Santa Fe Springs, Huntington Beach, and Long Beach, California, in Burbank, Oklahoma, and in Mexia, Texas, and production in these fields, together with the industrial depression then existing, soon brought about a severe decline in the price of crude oil (*Id.,* at p. 130; Oil and Gas Journal, August 23, 1934 (Oil Discovered 1920–1934), p. 237).

Fear of scarcity and increased demand for petroleum prior to 1926.—Various factors existing prior

[35] Cushing production fell from 49,000,000 barrels in 1915 to 21,000,000 in 1918 and to 8,000,000 in 1925. (United States Geological Survey, Mineral Resources of the United States, Part II, Petroleum in 1915, p. 665; *id.,* Petroleum in 1918, p. 1070; Bureau of Mines, Mineral Resources of the United States, 1926, Part II, p. 357.)

[36] Pennsylvania crude was selling as high as $6.10 per barrel. (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 129.)

to 1926, however, prevented the competitive conditions attending these early fields from causing the complete demoralization of the interstate market. Prior to that year the national market for crude petroleum was dominated by fear of immediate scarcity. (See Federal Oil Conservation Board, Report I (1926), pp. 8, 13; World Petroleum, May 1930 (Thomas, The Law of Diminishing Returns), p. 171.) This fear had been stimulated by the rising demand for petroleum brought on primarily by the increase in the use of automobiles. (Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* at p. 148.) The rising demand for petroleum and the fact that the earlier fields were wastefully produced caused the flush production of these fields and their effect upon the interstate market to be very short lived.

New flush fields and excess capacity after 1926.— After 1926, however, fear of immediate scarcity was replaced by knowledge of enormous excess capacity. Spurred on by fear of scarcity and high prices, the geologists and engineers of the industry had been perfecting geophysical methods of finding new fields and engineering techniques for digging to deeper and deeper pools. (Federal Oil Conservation Board, Report IV (1930), pp. 6–7; see Oil and Gas Journal, August 23, 1934 (Engineering Era in Oil Production Practice Brought Many Improvements), p. 233.) Beginning in 1926 the improved technology of finding and drilling up oil fields culminated in the discovery and rapid development in

quick succession of a series of prolific new pools (Federal Oil Conservation Board, Report IV (1930), pp. 6–7), the most important of which were the Seminole field in Oklahoma and the Crane-Upton and Yates pools in Texas, discovered in 1926, and the great pools of Oklahoma City (1928), Kettleman Hills, California (1928), East Texas (1930), and Conroe on the Gulf Coast of Texas (1932) (Oil and Gas Journal, August 23, 1934 (Oil Discovered 1920–1934), p. 237).

Present potential capacity.—The peculiar competitive forces inherent in the production of oil soon caused the development of a daily potential capacity many millions of barrels in excess of current consumption. So great had this potential become that by February 1931 one noted authority estimated the daily capacity to be 14 million barrels (Oil and Gas Journal, February 26, 1931 (Pogue, Economics of the Crude Oil Potential), p. 25). The Corporation Commission of Oklahoma found the potential of the United States to be about 10 million barrels. (See Transcript of Record, pp. 78–79, *Champlin Refining Company* v. *Corporation Commission, supra,* No. 122.) Estimates of the potential of the East Texas field alone have ranged as high as 120 million barrels daily [37] (Hearings, S. 1712, H. R. 5755, Senate Committee on Finance,

[37] The complaint alleges the potential production capacity of the East Texas field to be 100,000,000 barrels per day (R. 6). The estimate given by a witness for the respondents of 5,000,000 barrels per day (R. 101) would seem to be more reliable.

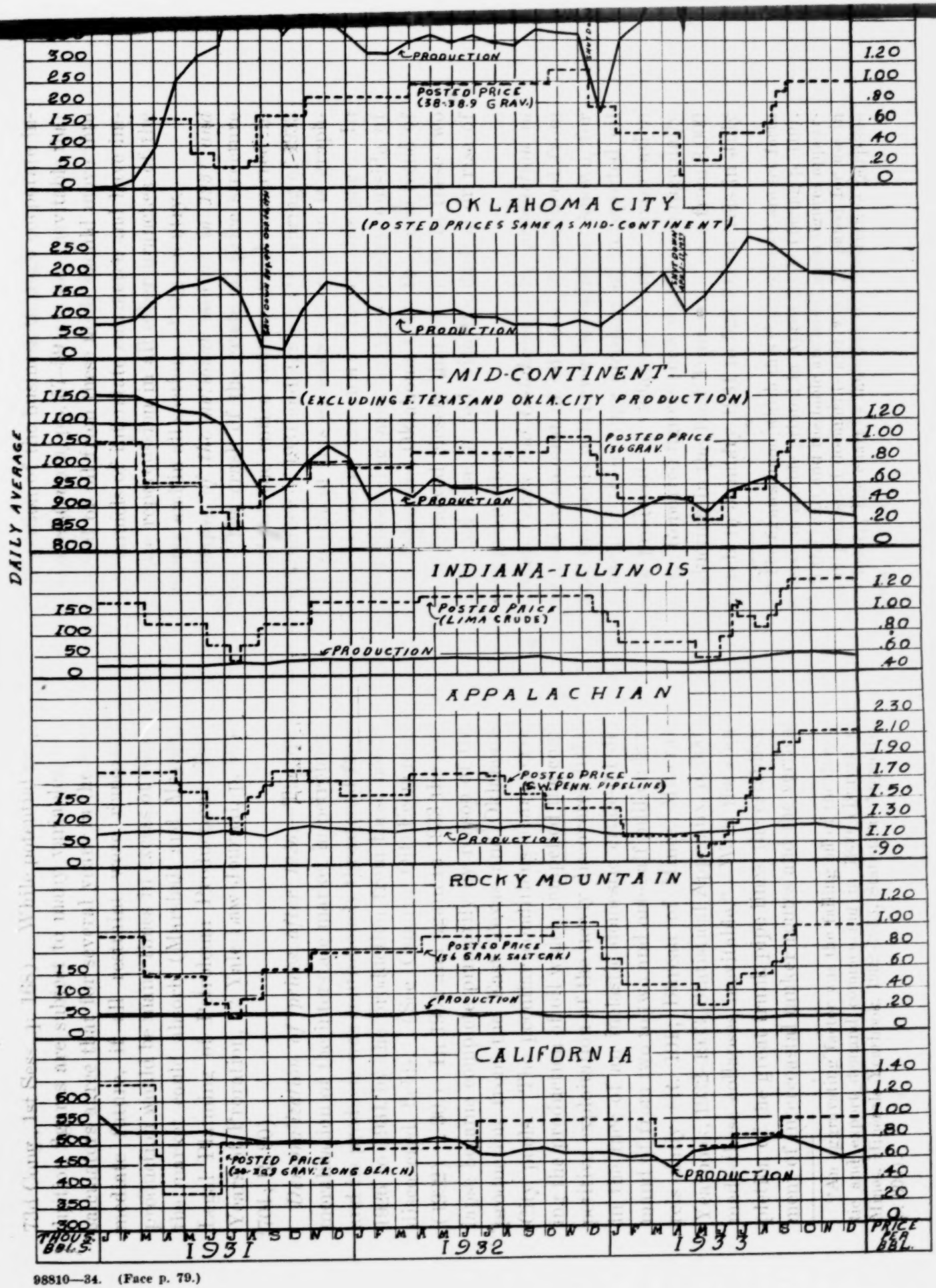
73d Cong., 1st Sess., p. 168). While potential production figures are subject to many variables, all calculators agree that for several years in the immediate future, if all restraint were removed, production would be many times in excess of what the market could absorb (Marshall and Meyers, Legal Planning of Petroleum Production: Two Years of Proration, 42 Yale Law Journal, p. 702, 704; R. 80).

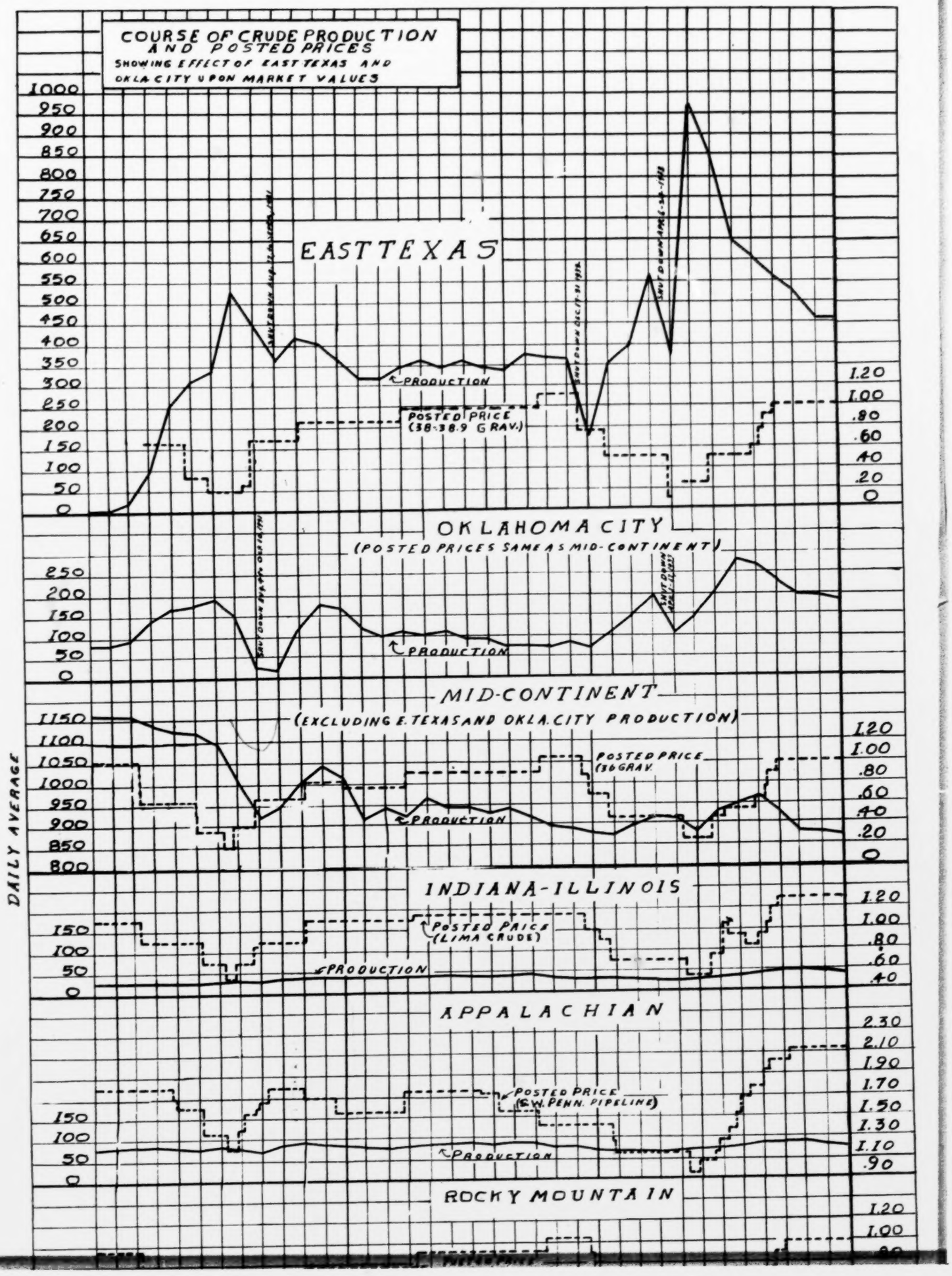
Demoralization of prices after 1926.—The demoralization of the interstate market in petroleum and its products was continuously threatened from 1926 to 1931 by the production from these newly discovered fields. (See Osborn, Oil Economics (1932) p. 30.) In 1931 and again in 1933 the collapse became complete primarily by reason of the production from the East Texas and Oklahoma City pools. The peculiar conditions characterizing the production of oil which compelled the competitive exploitation of the newly discovered fields in the face of an inelastic domestic crude-oil demand of from two to two and one-half million barrels daily (R. 101; Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300)

pletion of the great trunk pipe lines, the establishment of intercoastal tanker routes and the vertical

[38]An aggravating factor was the falling off of the domestic and export demand commencing in 1930 (Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300).

PRODUCTION
MID-CONTINENT
PRODUCTION
INDIANA-ILLINOIS
PRODUCTION
APPALACHIAN
PRODUCTION
PRODUCTION
CALIFORNIA
PRODUCTION
1932
1933


DAILY AVERAGE
PRODUCTION
POSTED PRICE (38-38.9 GRAV.)
OKLAHOMA CITY
(POSTED PRICES SAME AS MID-CONTINENT)
PRODUCTION
MID-CONTINENT
(EXCLUDING E. TEXAS AND OKLA. CITY PRODUCTION)
POSTED PRICE (36 GRAV.
PRODUCTION
INDIANA-ILLINOIS
POSTED PRICE (LIMA CRUDE)
PRODUCTION
APPALACHIAN
POSTED PRICE (S.W. PENN. PIPELINE)
PRODUCTION
ROCKY MOUNTAIN
POSTED PRICE (36 GRAV. SALT CAK)
PRODUCTION
CALIFORNIA
POSTED PRICE (20-22.9 GRAV. LONG BEACH)
PRODUCTION
THOUS. BBLS.
PRICE PER BBL.
1931
1932
1933


COURSE OF CRUDE PRODUCTION AND POSTED PRICES
SHOWING EFFECT OF EAST TEXAS AND OKLA CITY UPON MARKET VALUES
DAILY AVERAGE
EAST TEXAS
PRODUCTION
POSTED PRICE (38-38.9 GRAV.)
OKLAHOMA CITY
(POSTED PRICES SAME AS MID-CONTINENT)
PRODUCTION
MID-CONTINENT
(EXCLUDING E. TEXAS AND OKLA. CITY PRODUCTION)
POSTED PRICE (36 GRAV.
PRODUCTION
INDIANA-ILLINOIS
POSTED PRICE (LIMA CRUDE)
PRODUCTION
APPALACHIAN
POSTED PRICE (S.W. PENN. PIPELINE)
PRODUCTION
ROCKY MOUNTAIN

organization of the business through corporate integration (*supra*, pp. 57–59), it was inevitable that the flood of oil from these fields should move into the channels of interstate commerce and have immediate repercussion in all other branches of the industry and in all sections of the country.

Collapse of the national market in 1931 and 1933.—The crash of the crude-oil price structure throughout the entire country which occurred in the summer of 1931 and again in the spring of 1933 as a result of this excessive production is graphically shown by the chart [39] facing this page. In every producing area in the country outside of East Texas and Oklahoma City, the price trend of crude followed closely that of crude in these two fields and rose or fell with the decline or rise of their production.

East Texas and Oklahoma City production in 1931.—The amount of oil actually produced from these two fields will never be definitely known, for in each of them huge amounts of unreported oil were produced in violation of state conservation laws. Reported figures show that the average daily production in the East Texas field rose from 3,000 barrels in January 1931 to 528,000 barrels in July

[39] The figures upon which this chart is based are set forth in detail in a table printed in Appendix B (facing p. 110). Both the chart and the table are based upon figures appearing in published documents and were prepared for use in this brief. The chart is intended for illustrative purposes solely.

of that year, and that production in the Oklahoma City pool, which in January 1931 averaged 82,000 barrels per day, had mounted to 193,000 barrels per day by the following June (Table, facing p. 110, Appendix B). By reason of production in excess of the orders of the Railroad Commission of Texas, actual production in the East Texas field was far in excess of the reported figures and by the middle of August 1931 is estimated to have reached the staggering total of a million barrels daily.[40]

---

[40] The Bureau of Mines in its annual report on Crude Petroleum and Petroleum Products in 1931 (published in Mineral Resources of the United States, 1931, Part II) describes the production in the East Texas field during this period as follows (pp. 584–585):

> The discovery well was completed in October 1930, in Rusk County, in what is now called the "Joiner pool"; but the first large well was brought in near Kilgore, also in Rusk County, just before the end of 1930. Any doubt as to the possibilities of the area was dispelled when the field was extended into the Lathrop district, Gregg County, in the latter part of January 1931. A few months later the producing area was extended into Upshur and Smith Counties, virtually proving a total of 100,000 acres for production in four counties. From the standpoint of area the East Texas field far outranks all other known fields of the world. The prevalence of small, irregular leases, easy drilling, and the fact that only a few major companies had protected themselves with large blocks of acreage led to a competitive drilling campaign.
>
> In spite of the number of restrictive orders from the Railroad Commission production increased rapidly and by the middle of August reached 1,000,000 barrels daily. As production mounted prices declined, and considerable oil was sold for as low as 5 cents per barrel. Conditions became so chaotic that on August 17 the governor issued an order shutting down the field and called out the militia to enforce it. The shut-down lasted nearly three weeks, during which

Prices in 1931.—This production broke the price structure of crude oil throughout the entire country. In East Texas the price of crude fell nearly to the vanishing point. The posted price in this field had fallen to 20¢ per barrel by July 1931 (see Table facing p. 110, Appendix B), but large quantities were sold at even lower prices when major purchasers withdrew their postings, and sales as low as 2½¢ per barrel were recorded (Bureau of Mines, Mineral Resources of the United States, Part II, 1931, Crude Petroleum and Petroleum Products, pp. 605–606 [41]). The declines elsewhere were almost as severe. 36-degree gravity Mid-Continent which in 1926 had averaged $2.13 (Bureau of Mines, Mineral Resources of the United States, 1926, Part II, p. 386), and in January 1931, was $1.01 per barrel, had fallen to $0.20 a barrel in July

---

time surplus stocks were used up and a program was devised under which the field could be operated without demoralizing the entire crude oil market.

[41] This report stated (pp. 605–606):

> The majority of the changes in posted prices in 1931 were induced by developments in the East Texas field. Several lower postings were made in most grades in the Mid-Continent in the first quarter of the year before production in the East Texas field had passed the point at which it could be absorbed comfortably by the market. These undoubtedly anticipated the overproduction period that followed; the lower prices in the second quarter were brought on by the overproduction itself. Undercutting of prices in the East Texas field became so prevalent by midyear that the major purchasers withdrew their postings, and prices were reduced progressively until some producers accepted 2½ cents per barrel to obtain connections. Overproduction in the East Texas field tended to depress prices throughout the country, with the result that many so-called "marginal wells" were closed in.

of that year. See Table facing p. 110, Appendix B. The posted price for crude in the Appalachian District fell from $1.80 per barrel in January to $1.20 in July 1931; in the Indiana-Illinois area from $1.10 to $0.55; in the Rocky Mountain area, from $0.95 to $0.18; in the Gulf Coast area, from $0.69 to $0.31; and in California, from $1.38 to $0.81. (*Ibid.*)

Production and prices in 1932–1933: the collapse in 1933.—Production in the East Texas and Oklahoma City fields became so chaotic in the summer of 1931 that these two fields were completely shut down by the use of military forces. (National Petroleum News, August 12, 1931 (Oil Companies Prepare for Court Battle on Enforced Shutdown) p. 31; National Petroleum News, August 19, 1931 (Smith, Scramble for Crude as East Texas Output is Shut off under Martial Law) p. 19; see Transcript of Record, pp. 90–93, *Sterling* v. *Constantin,* 287 U. S. 378.) The use of troops granted respite for a time and increases in the price of crude were recorded throughout all producing areas (see Chart, *supra,* p. 79, and Table, facing p. 110, Appendix B), but soon the same competitive forces which had brought military forces into use had again disrupted the market, and further shut-downs of the East Texas field became necessary in December 1932 and April 1933, and of the Oklahoma City Pool in March 1933. (Oil and Gas Journal, December 22, 1932 (Bredberg, Shutdown in East Texas is Practically Complete and District Court

Dismisses all Injunctions), p. 33; Oil and Gas Journal, April 13, 1933 (Bredberg, Renewed Hope for Proration in East Texas Area; Field Shut down Awaiting Test of Key Wells) p. 45; Oil and Gas Journal, March 9, 1933 (Spinney, Governor Shuts in Oklahoma City Field, Charging some Companies Greatly Overproducing), p. 42.) These interruptions failed to stem the rising flood of crude oil. Estimated daily production in the East Texas field stood again at over one million barrels. (Oil and Gas Journal, March 30, 1933 (Rowley, Immediate Strengthening of Crude and Refined Oil Markets Expected as Result of Meeting), p. 7; *Id.,* May 4, 1933 (Rowley, Wild Orgy in East Texas Brings Inevitable Cut; Voluntary Curtailment Elsewhere Suggested), p. 7.) In the Oklahoma City pool daily reported production rose steadily to a peak of 278,000 barrels in July 1933. See Table, facing p. 110, Appendix B. The crude oil price structure throughout the country was again broken. The price decline which had commenced in the latter part of 1932 gathered momentum. See Chart, *supra,* p. 79. In April 1933 the posted price for crude in the East Texas field stood at 10¢ a barrel and parallel reductions occurred throughout the country.[42] Mid-Continent *posted* prices dropped

[42] The spread of price reductions throughout the nation during this period is described in Oil Weekly, May 15, 1933 (Price Cuts Extend to Mid-Continent-Eastern Areas), p. 33 (Appendix B, pp. 124–129) and in National Petroleum News, May 10, 1933 (Crude Prices Drop Under Pressure of East Texas Situation), p. 15 (Appendix B, pp. 129–132).

to 25 cents a barrel, Gulf Coast to 30 cents, Rocky Mountain to 25 cents, Appalachian to 97 cents, Lima to 55 cents, and California to 75 cents. See Table, facing p. 110, Appendix B. The significance of these figures appears from comparison with production costs in these areas.

	Posted Prices in May 1933	Costs (first 9 months of 1933)
East Texas	[1] $0.10	[2] $0.496
Mid-Continent	.25	[3] .830
Texas Gulf Coast	.30	[4] .580
Rocky Mountain	.25	[5] 1.163
Appalachian	.97	[6] 1.885
Lima	.55	[7] 1.186
California	.75	[8] .724

[1] Prices posted April 25, 1933. On May 2 postings were discontinued until May 13 when they were raised to 25 cents. The posted prices appear in the Table, facing p. 110, Appendix B.

[2] See Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, etc., *supra*, at p. 17, Appendix B, p. 75.

[3] Oklahoma costs. *Ibid*, p. 21, Appendix B, p. 79.

[4] *Ibid*, p. 17, Appendix B, p. 75.

[5] Salt Creek, Wyoming Costs. *Ibid*, p. 27, Appendix B, p. 85.

[6] Pennsylvania costs. *Ibid*, p. 33, Appendix B, p. 91.

[7] Indiana costs. *Ibid*, p. 31, Appendix B, p. 89.

[8] Signal Hill costs (chosen because Signal Hill prices are used as representative). *Ibid*, p. 10, Appendix B, p. 68.

In every region except California costs were far above the prices of the oil.

Collapse of gasoline prices.—The collapse in the market structure of crude petroleum brought on by this excessive production was necessarily accompanied by a similar collapse in the market structure of the refined products.[43] Cheap crude flooded

[43] See Oil and Gas Journal, July 27, 1933 (Willson, New Lows in Average Prices for Refined Products Established in the First Six Months of 1933) p. 36, with table showing how prices of refined products rose and fell with the prices of crude oil.

the market with cheap gasoline. The price trend of wholesale gasoline closely paralleled that of crude oil, reaching as low as 2¼ to 2½¢ per gallon when the crude oil market collapsed in the summer of 1931 and again in the spring of 1933 (Oil and Gas Journal, July 27, 1933 (Table of Prices for Refined Products), p. 38).

Surplus stocks.—Because of the inelastic nature of the demand for petroleum products (*supra,* p. 71) the price declines did not bring about any material increase in their consumption, and this factor, together with the development of refinery technique [44] which had greatly increased the recovery of gasoline from crude oil, resulted in tremendous surplus stocks of crude and refined products. See Hearings on the Petroleum Code before the National Recovery Administration, Volume 2, pp. 3003–4. At the end of 1932, stocks of crude oil amounted to 339,715,000 barrels and stocks of refined products amounted to 247,188,000 barrels (Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300). These surplus stocks are a constant threat to the stability of the market structure.

[44] The cracking process was described by this Court in *Standard Oil Company (Indiana)* v. *United States*, 283 U. S. 163, 167. See also Federal Trade Commission, Report on Petroleum Industry, etc., *supra*, at p. 142; Federal Oil Conservation Board, Report V (1932), pp. 26–27. It is now possible to obtain up to 70 per cent gasoline from crude oil instead of the 20–30 per cent formerly obtainable (Oil and Gas Journal, February 5, 1931 (Egloff, Nelson, and Truesdell, Cracking Steadily Gaining in Importance) p. 24).

Competitive struggle for gallonage.—The accumulation of this large excess supply intensified the competition for the market. Producers were driven to enter the refining and marketing branches of the industry and thousands of new filling stations were built in every section of the country. (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Swensrud, Economics of Distribution in the Petroleum Industry) pp. 604, 605, 608, Appendix B, pp. 51–52; Bureau of Foreign and Domestic Commerce, Petroleum Industry of the Gulf Southwest (1931), p. 128). Because of the inelastic demand for gasoline, no larger aggregate amount of gasoline was distributed by reason of these additional facilities.[45] It was merely distributed through more retail outlets at an increased cost of distribution to the consumer. This struggle between retail marketers for gallonage has led to vicious competitive excesses throughout the country (R. 85, 86).

"Hot oil" and the interstate market.—The huge amounts of oil produced in violation of state law (R. 97, 102, 109, 120) have exerted a particularly depressing effect upon the interstate market of petroleum and its products (R. 85–86, 97, 102–103, 109–110, 120). Actual reported production in recent years shows a tremendous amount of illegal or

[45] The demand decreased after 1929 (Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300).

"hot" oil; the amount not reported can only be estimated.[46] By March 30, 1933, the output of the East Texas Field was estimated to be a million barrels a day, although the daily allowable was only 400,000 barrels [47] (Oil and Gas Journal, March 30, 1933 (Rowley, Immediate Strengthening of Crude and Refined Oil Markets Expected as Result of Meeting), p. 7). Considerable quantities of "hot" oil were also produced in the Oklahoma City pool.[48]

---

[46] "How much more oil was produced in the field no one may ever be able to say, as it is believed millions of barrels were produced, of which there was no record made and most of which sold below market prices" (Oil and Gas Journal, Jan. 26, 1933 (Bredberg, Year of Turmoil in World's Largest Oil Field), p. 102).

[47] The Oil and Gas Journal carried weekly estimates of the illegal production in the East Texas field. On February 20, 1933, it was estimated to amount to 103,000 barrels daily (Oil and Gas Journal, March 2, 1933 (East Texas Crude Production and Shipments), p. 32); on February 27, 1933, the estimate was 90,695 to 150,000 barrels per day (*Id.*, March 9, 1933 (East Texas Crude Production and Shipments), p. 32); on March 25, 1933, the *reported* production was 231,381 barrels per day in excess of the daily allowable (400,000 barrels), and the *actual* daily production was estimated at 378,875 barrels above the allowable (*Id.*, March 30, 1933 (East Texas Crude Production and Shipments), p. 32); and by March 30, 1933, the output of the field was around 1,000,000 barrels a day as against a daily allowable of 400,000 barrels (*Id.*, March 30, 1933 (Rowley, Immediate Strengthening of Crude and Refined Oil Markets Expected as Result of Meeting), p. 7).

[48] At hearings held by a committee of the Oklahoma State Senate in January 1933 investigating the production situation in the Oklahoma City field, the vice president of one company admitted that his company had produced approximately 1,000,000 barrels in excess of its allowable between

Because of its illegal character, this oil was offered at large discounts below the posted price (R. 85, 97, 102–103, 120), and accelerated the decline in the price of crude oil. The refiners who purchased "hot" oil were able to market their petroleum products at a lower price than their competitors dealing in legal oil (R. 85, 97; Petroleum Development and Technology, 1933, American Institute of Mining and Metallurgical Engineers (Struth, Petroleum Economics in 1932), p. 51;[49] Oil and Gas

---

October 1931 and November 1932 (Oil and Gas Journal, Feb. 2, 1933 (Evidence of Big Overproduction and of Sales of Overproduced Oil in Oklahoma City), p. 11). The official of another company testified that his company had purchased at least 525,000 barrels of "hot" oil at prices ranging from 24 to 40 percent below the posted price (*Ibid*). At a later date of this hearing, the official of another company admitted that his company had run 1,000,000 barrels of illegally produced oil in 1931 and 1932, and was running 8,000 barrels per day of such oil in January 1933 (Oil and Gas Journal, March 2, 1933 (Easy to Ship Illegal Oil Out of Oklahoma City, Witnesses Say, Who Admit Having Done It), p. 11). The situation was so bad in this field that the Governor of Oklahoma ordered a complete shutdown on March 4, 1933, in order to curb the overproduction (Oil and Gas Journal, March 9, 1933 (Spinney, Governor Shuts in Oklahoma City Field, Charging Some Companies Greatly Overproducing) p. 42).

[49] It is there stated (p. 51):

> East Texas continued to exert a far-reaching influence on the crude and gasoline market during 1932. Despite the fact that oil prices were advanced in most fields, large quantities of oil were produced in East Texas in violation of state proration orders, and sold in the market at prices considerably below official postings. This created competitive conditions in the gasoline market that were felt by all refining centers of the United States. The quantity of gasoline produced from cheap East Texas crude was not large, but

Journal, January 12, 1933 (Willson, Price Reductions in Oklahoma Market Include Kerosene, Distillate, Fuels, and Gasoline), p. 20[50]); and those wholesalers and retailers who acquired "hot" gasoline were similarly able to cut prices below that of their competitors (R. 97), compelling the latter to meet the lower price in order to retain their business (R. 97, 103, 120). Waves of price-cutting of oil and its products extended across entire states and often across state boundaries (R. 85, 97). Legitimate refiners were frequently compelled to sell below cost in order to preserve their market (R. 85, 97). Bootlegging of "hot" oil and "hot" gasoline developed in amazing proportions in the East Texas field (R. 85, 97, 102–103, 120). "Hot" oil and "hot" gasoline lost their identity upon being commingled with legal oil and its products and moved into the channels of interstate commerce (R. 120). Even such "hot" oil or gasoline as might in an individual case move wholly within the State necessarily had a direct effect upon the interstate market because it compelled other producers

---

the volume was sufficient to influence prices in practically all sections of the country. Thus, while the industry's economic situation showed visible improvement statistically, the unreported and unseen statistics originating in East Texas proved to be an insurmountable obstacle to the economic betterment that was otherwise apparently justified.

[50] Some underselling was also caused by offering of distress oil by producers who were unable to secure pipe-line connections (Oil and Gas Journal, Jan. 12, 1933 (Willson, Price Reductions in Oklahoma Market Include Kerosene, Distillate, Fuels and Gasoline), p. 20).

to produce "hot" oil and to place it upon the interstate market, in order to prevent drainage of the oil from under their premises (R. 81). In any case it absorbed part of the local market which had ordinarily been supplied by dealers in legitimate oil and its products, impelling them to seek markets in other states (R. 81, 120). Certain of the petitioners in the *Amazon* case were shown to have been producing "hot" oil (R. 128–129), and "hot" oil produced by the Amazon Petroleum Corporation was shown to have been commingled with other oil and moved to the terminal of a refining company from which it moved into interstate commerce (R. 129–130). Another of the petitioners was discovered moving oil from one of its leases to a refining company by a "bypass", a secret device employed to deliver "hot" oil, and part of this oil was refined into products which were shipped in interstate commerce (R. 130).

Importance of "stripper" well areas.—The collapse throughout the country of the price structure of crude oil resulting from the flush production of the new fields drastically affected producers in the "stripper" well areas. Out of the total of 321,000 producing wells in the country (R. 89, 90, 100–101; see Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 335, Appendix B, p. 49), only about 15,000 are flush wells and of these 11,000 are located in the East Texas Field (R. 100). The rest of them are "stripper" wells having an average production of from one to five barrels per

day; 250,000 of these produce an average of only one barrel daily. (R. 89; Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 335, Appendix B, p. 49.) In Illinois, New York, Ohio, Pennsylvania and West Virginia the daily average produced is less than one barrel per well and the wells of Indiana and Kentucky average less than 1½ barrels per day. (*Ibid.*) Many of the states in which the flush fields are located, including Texas and Oklahoma, also have large "stripper" well areas (R. 106, 107, 95–96, 104). The flush production of the new fields is, moreover, of temporary duration (R. 80), and prior to the approval of the Petroleum Code the excessive production from the East Texas field was diminishing the natural pressure and was bringing nearer the date when this field would also have to go on the pump and become a "stripper" field (Oil and Gas Journal, May 18, 1933 (Bignell, Recent Orgy of Production in East Texas Field Has Definitely Shortened the Flowing Life), p. 10; Oil Weekly, May 15, 1933 (Reservoir Pressure Drops as East Texas Production Spree Continues), p. 7), as have all flush fields in the past. See Report on Pipe Lines, *supra,* page ix, Appendix B, p. 21. The "stripper" fields are the backbone of the national supply, furnishing in normal times somewhat over 25 percent of the total domestic production [51] (R. 107).

---

[51] See Hearings, S. 1712, H. R. 5755, Senate Finance Committee, 73rd Cong. 1st Sess. pp. 174, 179, 247, 250, Appendix B, pp. 139–140, 145, 146. See statement of Wirt Franklin at

Effect of price collapses on "stripper" well areas—loss of their national market.—The decline in crude oil prices drove prices in the "stripper" well areas far below the cost of production, causing many of these wells to be abandoned. (R. 81–82, 84, 89, 90–91, 105; *supra,* p. 84; and see Tariff Commission Report on Crude Petroleum, etc., *supra,* at pp. 158–163, Appendix B, pp. 59–65, and Petroleum Administrative Board, Preliminary Report on Crude Petroleum Costs, etc., *supra,* at pp. 10–33, Appen-

---

Hearings on Petroleum Code before National Recovery Administration, as follows (p. 3032):

> The most important oil reserves in the nation are not found in the present flush fields or great pools. Our greatest oil reserves and the most important ones are in the approximately 300,000 stripper wells, with a total production of about 600,000 barrels per day. Several billion barrels of petroleum will ultimately be recovered from these wells. That recovery, however, is dependent upon the possibility of operating these wells at a profit. Since they are all on the pump, their production costs are necessarily higher than is the case with wells of flush production, such as are found in new fields only. Under present conditions, these wells are operated at a loss. Many of them have been shut down. Once closed, few of them ever can be reopened. Their premature abandonment would present a loss to the Nation of many millions of dollars of actual wealth. From some of those wells comes our most important supply of lubricants. They occupy a most important position in the structure of the petroleum industry. They are the very backbone of that industry. Flush fields are uncertain. Wells in such fields may suddenly cease flowing and require pumping. The flush wells of today are the stripper wells of tomorrow. The output of such wells is impossible to estimate. The wells of settled production are the most substantial part of the industry.

dix B, pp. 68–91.) During 1931, approximately 22,000 of such wells were abandoned, many more than in any other previous year. (Bureau of Mines, Mineral Resources of the United States, 1931, Part II, p. 610.) The record is replete with statements by producers from nearly every "stripper" well area in the country, showing the loss of their normal interstate and foreign market resulting from the excessive production in the flush fields and the decline of prices below their lifting costs, and the consequent abandonment of many of their wells. (R. 90–91, 105, 106, 107, 94, 95, 104; see Hearings, S. 1712, H. R. 5755, Senate Committee on Finance, 73rd Cong. 1st Sess. pp. 174, 177, 178, 215, 242, 243, 244–250, 271, Appendix B, pp. 139–148; Hearings, H. R. 5720, S. 1736, House Committee on Ways and Means, 73d Cong., 1st Sess., pp. 103–106, 109–111, 113, 117, 118, 119, Appendix B, pp. 155–161.) Production outside of the flush fields of Texas, Oklahoma, and Kansas decreased over 18 million barrels during the first six months of 1933, although the total production in the country increased 39 million barrels. (Oil and Gas Journal, July 27, 1933 (McIntyre, Flush Fields and Illegal Oil Runs Responsible for Increased Crude Production), p. 35, Appendix B, p. 108.) Production from the flush fields threatened to monopolize the market of most of the "stripper" well areas in the country. (R. 90, 96,

105–106, 107; see Federal Oil Conservation Board, Report V (1932), p. 3.)[52]

Permanent loss of resources in stripper-well areas.—The shutting down of many of the "stripper" wells caused the permanent loss of their reserves as a result of water intrusion (R. 89, 90, 101, 102, 105, 107), and in the case of other "stripper" wells, the majority of which are owned by persons of moderate means (R. 90, 106), so increased the cost of restoring them as producers as to make recovery of their reserves economically impracticable.[53] The loss of these reserves not only involved

---

[52] In this report it is stated (p. 3):

> Because the potential production, established by competitive drilling, is in excess of the demand for oil, the adjustment among the various sources must either depend on their comparative costs of production, or on enforced restrictions of production to enable allocations of outlet among old and new areas. The new flush fields are the low-cost units, and, therefore, if costs alone were to control, such fields would monopolize the market. Yet unrestricted production from such sources means the temporary or even permanent abandonment of the older wells of settled production, with attendant dislocation of investments. It also means lessened ultimate recovery from the flush fields themselves because of loss of the irreplaceable lifting power of the gas blown into the air, accelerated water encroachment, and other causes.

[53] See Oil and Gas Journal, Feb. 5, 1931 (Hearing before Senate Committee), p. 21 at p. 98:

> These wells are now rapidly being flooded with salt water and the owners of these wells, independent operators, are facing utter ruin. You understand that every well makes a certain amount of salt water. This water is produced right along with the oil. If the wells are completely shut down the salt water accumulates and, being heavier than oil, forces its way

serious economic injury to the owners of the "stripper" wells and to the refineries and pipe-line companies which depend upon these wells for the supply of petroleum normally moved into interstate commerce by such refineries or pipe-line companies (R. 90, 92, 94, 95, 96, 89), not only involved loss of employment and drastic reduction of wages to the thousands of employees dependent for their jobs on the existence of these businesses (R. 89, 90, 92, 96, 103–104, 105, 106, 107), without materially increasing employment in the flush fields (R. 96, 106), but also threatened the vital public interests concerned in the conservation of this important natural resource (*infra,* pp. 138–141).

---

back into the oil sand, driving the oil away from the pumps. Today the owners of these wells are pumping them just enough to keep the salt water off, in the hope that some relief may be obtained in the next few weeks that will give them a market again for their products.

Of course you understand the length of time that a producer can pump these wells is gauged by two things: First, his financial ability to continue his operation with no income; and second, the physical limitation. I mean by that that each well makes a varying amount of salt water. The wells making the most salt water would be the first hurt.

It is not necessary for me, I am sure, to point out to this committee that in addition to the owners of these wells there are the royalty owners, the farmers on whose lands these wells have been produced, and they have been depending upon them for a steady income, and the men who have been employed in the producing of these wells, the banks and the merchants of the community that have been built up on this business.

C. The fruitless efforts of the industry and of the States to control the competitive conditions attending the production of oil demonstrate the interstate unity of the oil industry and the need for federal control

The history of the oil industry since 1926 has been characterized by unsuccessful attempts on the part of the industry and the States to regulate the competitive conditions in the production of oil which have compelled production in excess of market demand. The failure of those attempts serves further to demonstrate the essential interstate character of this industry.

Failure of voluntary group action.—Voluntary group action by producers in a few of the fields followed the discovery of the large new pools in 1926 and 1927.[54] Umpires and informal committees were appointed to prorate an estimated market demand among the individual wells and properties within a field. In a few instances, particularly in California, these plans worked. (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Allen, Control of California Oil Curtailment), p. 47). But in other cases it proved impossible to obtain compliance with the quotas thus

[54] In the Federal Trade Commission Report on the Petroleum Industry, etc., *supra*, at pp. 188–193, the attempts at voluntary proration in the Salt Creek, Panhandle and Seminole fields are discussed. The Yates and Kettleman Hills fields are examples of successful voluntary proration. See Oil and Gas Journal, Oct. 23, 1930 (Hardison, Yates Outstanding Proration Example), p. 64.

assigned.[55] Practical difficulties have rendered such voluntary proration impossible in most fields. By reason of the geologic and legal factors governing the production of oil, refusal to comply by any one operator within the field would compel all operators to abandon any voluntary plans unless they were willing to permit the oil to be drained from under their premises. See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 17. Other fields, in the same or other states, which refused to prorate, merely absorbed a larger share of the national market upon which all fields were dependent (*Id.*, p. 161). Fear of the antitrust acts, both State and Federal, deterred the industry from making more aggressive attempts to secure stability by agreements within pools and between pools wherever located (*Id.*, p. 17).

Failure of attempts at State regulation.—The efforts of the States were equally futile. Oklahoma acting under an old conservation statute passed in 1915 (Oklahoma Sess. Laws 1915, c. 25) was the first State to supplement the efforts of the industry by force of law and by 1930 the Oklahoma Corporation Commission was prorating the production of the entire State. See Transcript of Record, p. 279–280, *Champlin Refining Co.* v. *Corporation Commis-*

[55] In the Seminole Field it was found necessary to use the statutory powers of the Corporation Commission. (Federal Trade Commission, Report on the Petroleum Industry, etc., *supra*, at pp. 189–193.)

sion, No. 485, *supra;* Marshall and Meyers, Legal Planning of Petroleum Production: Two Years of Proration, 42 Yale Law Journal, 702. Within a short time the Texas Railroad Commission, the official conservation agency of that State, was issuing proration orders on the basis of old waste statutes for many fields (Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Donoghue, Proration in Texas), p. 67). The Railroad Commission was soon embroiled in litigation. Its orders were twice invalidated by the courts on the ground that the conservation laws of Texas did not give the Commission authority to limit production to market demand. The conservation law of Texas was finally amended to give such authority to the Commission.[56]

[56] The series of statutes, proration orders, and decisions in Texas are reviewed in *Amazon Petroleum Corporation* v. *Railroad Commission*, *supra*, p. 6, n. 8. The first of these decisions (*McMillan* v. *Texas Railroad Commission*, 51 F. (2d) 400) precipitated a crisis so acute as to call forth the use of military forces in East Texas and a special session of the Legislature in the summer of 1931, which, although it gave the Commission authority to issue proration orders, specifically withheld power to prorate to market demand. After a temporary interval, the Railroad Commission again took over proration but its orders were again held invalid by a federal three-judge court. (*People's Petroleum Producers* v. *Smith*, 1 F. Supp. 361; see Marshall and Meyers, Legal Planning of Petroleum Production: Two Years of Proration, 42 Yale Law Journal, pp. 715–720.) The court there held that the orders of the Commission, while ostensibly predicated upon mere physical waste, were actually in part passed upon a market standard in the face of an ex-

In California a statute was passed seeking to control production by limiting the amount of gas which might be produced per barrel of oil, and the Court unanimously sustained this statute in *Bandini Co.* v. *Superior Court,* 284 U. S. 8. This gas-oil ratio law proved insufficient as a means of preventing excess production and a statute similar to that in Oklahoma was passed by the California Legislature but was defeated by a referendum.[57] (See Hearings, S. 1712, H. R. 5755, Senate Committee on Finance, 73d Cong., 1st Sess., p. 48, Appendix B, p. 169.)

In *Champlin Refining Co.* v. *Corporation Commission,* 286 U. S. 210, this Court sustained proration of production to market demand by a State as against the claim by producers of deprivation of their property in violation of the due process clause of the Fourteenth Amendment, but this decision did not, as many hoped, spell success for proration by the States. The oil-producing States acting individually and driven by self-interest, proved un-

---

press statutory prohibition against limiting the production of oil to the market demand. Before the decree could be entered in this case, the Texas Legislature amended the conservation law to authorize proration predicated upon reasonable market demand. (Tex. Stat., Vern. Supp. 1934, Articles 6014, 6014a, 6029, 6049a, c, d.)

[57] See 2 Cal. Gen. Laws (Deering 1931) Sec. 5636, rejected on referendum May 3, 1931. In California the industry attempted state-wide voluntary curtailment under a so-called "Central Proration Committee," upon which all fields in the State were represented.

able to prorate among themselves a national market (*infra*, p. 104). Many of the States had no proration law at all,[58] and even in States which had such laws it proved impossible to obtain compliance when enforcement in other States collapsed and demoralized the market structure (R. 82, 84). Just as within a field, curtailment for some and not for others resulted inevitably in the loss of the fair share of the market for those who did curtail, so as between the oil-producing states curtailment by some and no curtailment or ineffective curtailment by others, resulted inevitably in a loss of the fair share of the national market for those states that did curtail. (See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 13.[59]) And when to an amount of oil

[58] Only Texas, Oklahoma, and Kansas had proration laws. See Ely, Oil and Gas Conservation Statutes (Federal Oil Conservation Board).

[59] "If it be assumed that production from all the wells in a single pool has been curtailed to equal the demand from that pool, and that all the pools of the State have been likewise regulated, nevertheless these pools are generally tributary to a market supplied also by other pools in nearby States; and all the pools in the curtailing State are at the mercy of any major pool in another. This is true because flush production is cheap and interstate pipe lines are readily interconnected. An uncurtailed flush pool can as readily displace any competing settled pool in the next State as it can its neighbor in the same county, if the old pool does not drop its prices to a level of flush-production costs, and hence to a level below the average costs of the field's life.

"In other words, waste depresses prices; but lower prices, insulated by the capture doctrine, only partially restrain production, for production is controlled by the pace of off-

produced without reference to the demands of the national market there was added still more oil produced illegally, and sold, because of its taint of illegality, at only a fraction of the price of legally produced oil, the competitive forces which were generated between and among the states was more than proration could stand.[60]

If the market for oil were a local market, or if the industry were not so physically and economically interrelated on a national scale as to make transfers from different sources of supply such an inevitable occurrence, proration might be able to operate successfully as a local matter. But no more striking proof of the interrelationship of the entire industry can be found than in the statistical records of the past few years which show how markets for both crude and products were almost everywhere governed by the volume of production coming out of East Texas. (*Supra,* pp. 78–85.)

Failure of efforts to coordinate State action.— Although both the industry and the states soon recognized that cooperation between all of the states was necessary if control of the competitive condi-

---

set drilling set by the greediest producer; and the destructive process cannot be stopped by any individual operator. The State can relieve this pressure internally, but not that from outside its borders." (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 13.)

See recommendation to the Federal Oil Conservation Board of the Oil States' Advisory Committee, Ely, *supra*, at p. 20, Appendix B, pp. 161–164.

[60] The disregard for Texas and Oklahoma proration laws has been described, *supra*, p. 87.

tions attending the production of oil was to be achieved, it became readily apparent that efforts to obtain such cooperation would prove futile. On April 2, 1929, the American Petroleum Institute [61] submitted to the Federal Oil Conservation Board a world-wide plan for limitation of production to demand and sought the approval of the Board in order to obtain immunity from the federal anti-trust laws.[62] See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 17. On the advice of the Attorney General, the Board held that it had no authority to grant such immunity (*ibid*), but suggested that the industry attempt to secure the cooperation of the states in an interstate compact to be approved by Congress [63] (*id.*, p. 18). The suggestions of the Oil

---

[61] In 1926 this association had opposed a plan for Federal control suggested in that year to the Federal Oil Conservation Board. See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 15; Hearings, Federal Oil Conservation Board, May 27, 1926, pp. 2–23.

[62] "It was proposed, by voluntary agreement of the units within the American industry, in cooperation with foreign companies, to restrict the production of the world to the 1928 level, and to allocate that figure among producing nations in the ratio established by their 1928 production; and to carry the purpose further by allocating the American quota among domestic producing regions on the same basis." (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 17.)

[63] A meeting of governors' representatives was held at Colorado Springs in June 1929, at which Secretary of the Interior Wilbur, Chairman of the Federal Oil Conservation

Conservation Board were disregarded until the spring of 1931, when production from the East Texas field had demoralized the national market. In April of that year the governors of the states in the Mid-Continent area appointed the "Oil States' Advisory Committee" in an effort to carry out a common program (*Id.*, pp. 19–20). The Committee recommended allocations to the various states based upon recommendations of committees of economists and engineers appointed by the Federal Oil Conservation Board and by the American Petroleum Institute [64] (*Id.*, pp. 21, 165).

Board, presented a program calling for enactment of uniform conservation legislation for the major oil producing states and the coordination of the efforts of the states by means of a joint commission to be created by an interstate compact ratified by Congress. (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), pp. 18–19.)

[64] These Committees had for some time been engaged in an effort to develop a statistical technique for forecasting the national market demand for crude petroleum (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), pp. 164–165, 261). After careful study, such a technique had been devised and, with certain modifications and improvements which have been made from time to time, it has proved to be sufficiently precise to forecast the consumptive requirements of the market within a small margin of error (*supra*, p. 72; Federal Oil Conservation Board, Surveys of National Petroleum Requirements). The work carried on under the auspices of the Federal Oil Conservation Board has been continued by the Petroleum Economics Division of the United States Bureau of Mines. See Appendix B, pp. 185–186. The facts as developed by this Bureau form the basis upon which the national consumptive demand and the allocation of each state's proportionate

The Oil States' Advisory Committee found it impossible to secure the voluntary cooperation of the states. See Oil and Gas Journal, July 16, 1931 (Score Sheet on Oil Production), p. 28.[65] The suggestion which had been repeatedly made for the coordination of the activities of the states through the medium of an interstate compact was never acted upon by the state legislatures (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), pp. 18, 19, 20, 22–24), even though a bill to authorize such a compact was introduced in Congress[66] (*Id.*, p. 23). Some of the

---

part of that demand have been made under those sections of the Petroleum Code here in question. See Appendix B, pp. 186–199.

[65] This article reads (p. 28):

"Below is shown the allotted average daily production in the United States from April 1 to October 1, 1931, suggested by the Oil States Advisory Committee and the actual daily average production in the week ending July 11:

Score sheet on oil production for the week ending July 11, 1931

	Allotted	Actual	Over	Under
Texas	714,000	987,047	273,040	.....
California	500,000	519,650	19,650	.....
New Mexico	40,000	42,113	2,113	.....
Oklahoma	550,000	631,915	81,915	.....
Louisiana	65,000	56,115	.....	8,885
Kansas	110,000	101,250	.....	8,750
Arkansas	50,000	43,475	.....	6,525
Eastern	110,000	107,000	.....	3,000
Rocky Mountain fields	60,000	50,415	.....	9,585
Total	2,199,000	2,538,980	376,725	36,745

Total net daily average overproduction, 339,980 bbls."

[66] In advocating such a compact, Ely admitted that the states would not adhere if it had any sanction other than

states, driven by the pressure of local interests, had no desire to regard any suggested quota as their reasonable market demand. (See National Petroleum News, March 30, 1932 (Another "Compact" on Oil Talked, But Texas Merely Listens), p. 25.) Following the crash of crude oil prices in the summer of 1931, the Governors of Oklahoma, Texas, and Kansas, and the regulatory commissions of those states entered into an informal agreement in an effort to limit the production of their respective states to certain fixed amounts. (Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 21.) Although this agreement, aided by the use of troops in Texas and Oklahoma, succeeded for a time during the latter part of 1931 and 1932 in stabilizing the price structure of petroleum, by the end of that year the production of oil had again gotten completely out of hand, culminating in the second collapse of prices in the spring of 1933.[67]

---

comity. See Ely, Oil Conservation through Interstate Agreement (Federal Oil Conservation Board), p. 215.

[67] One of the factors contributing to the inability of the states to enforce compliance was their lack of power to prevent the movement of oil produced in excess of quota when consigned to an interstate destination. Whether oil has been produced in excess of allowable cannot, of course, be determined until after the oil is produced, at which time the oil may already be in the course of movement to consignees. Numerous injunctions were obtained against state regulatory officials by producers and refiners on the ground that the consignments in question of crude or its products were to destinations in another state. The railroads felt themselves

Demand for Federal action.—Faced with this long history of unsuccessful attempts to protect the national market for oil, the industry and the producing States were compelled to conclude that if stabilization of the interstate market was to be achieved, the Federal Government must coordinate the activities of the oil producing States and the industry by providing sanctions to enforce a scientific determination of reasonable market demand between and among the States.[68] From all the pro-

---

bound to accept for interstate shipment all oil regardless of the legality of its production, and obtained an injunction against interference by the state authorities (Oil and Gas Journal, February 23, 1933 (Bredberg, Many Injunctions Granted in East Texas District; New Locations and Completions Decline), p. 57). It was a simple matter for oil producers and refiners, in order to evade the authority of the state regulatory bodies, to make initial consignments to consignees in another state and to divert such consignments while in transit to local consignees.

[68] "We have tried every alternative. When the industry in 1930 attempted after long conferences to make effective an agreement for a limitation upon production, the Attorney General of the United States at that time declared such an agreement unlawful. The Governors of the Oil States proposed compacts or other interstate agreements, but none of these has been completed. Statutes were drafted, amended and re-amended in the hope of finding some way to prevent the petroleum industry from being demoralized. Armies of men held oil fields under martial law in order to make effective an attempted control of production. Operators both as individuals and as companies voluntarily sacrificed large portions of their production in order that the industry might balance supply with demand. The courts have been flooded with cases involving these efforts. The legislatures of oil States have been forced to devote a disproportionate amount

ducing areas had come a demand for Federal control. (Hearings, S. 1712, H. R. 5755, Senate Committee on Finance, 73rd Cong., 1st Sess., pp. 140–160, 173–182, 214–222, 241, 261, 269–273; Hearings, H. R. 5720, S. 1736, House Committee on Ways and Means, 73d Cong., 1st Sess., pp. 73–81, 96–120; Appendix B, pp. 139–161.) The governors of all the principal oil-producing States had urged the President and Congress to act, proclaiming the futility of further efforts at State control. (Hearings, S. 1712, H. R. 5755, Senate Committee on

---

of their time to the attempted solution of this production problem. Each effort has failed, since neither individual effort nor the effort of any single State or any group of States, could meet an issue which was of an interstate character and required both the approval and the cooperation of the Federal government to make it succeed. Through the National Industrial Recovery Act and this code, authorized under the Act, we believe we can achieve this control of production. * * *

"This code being an overall picture over the United States will bring about coordination, so that one State or one area will not be able by reducing prices below the cost of production to seize the demand from other States from other areas. On this point, Mr. Administrator, depends the success of this code, or the success of any movement which will restore the oil industry. This is the meat in the cocoanut." (Statement of Wirt Franklin, President of the Independent Petroleum Association of America, Hearings before the National Recovery Administration on the Petroleum Code, pp. 3021–3024).

The vain efforts in the spring of 1933 to rescue the industry through means other than the binding sanctions of federal law are described in the Hearings, H. R. 5720, S. 1736, House Committee on Ways and Means, 73d Cong., 1st Sess., pp. 97–98, Appendix B, pp. 152–155.

Finance, 73d Cong., 1st Sess., pp. 43, 46–50, Appendix B, pp. 165–175.)

D. Under the decisions of this Court the production-control provisions of the Petroleum Code are a valid exercise of the commerce power of Congress

The general proposition that Congress under the commerce power may regulate intrastate activity which burdens or obstructs interstate commerce is fully established (*supra*, p. 45). In every such case the only constitutional question is whether the effect of the local activity upon interstate commerce is sufficiently direct and substantial to justify regulation.

Respondents have already attempted to demonstrate the direct, immediate, and substantial relationship between the production of crude oil and interstate commerce. Commerce in oil and oil products is primarily interstate (*supra*, pp. 48–61). Because of the standardized nature of these products, the relative inelasticity of demand, the fluidity of movement from sources of production to points of distribution and consumption, and the integrated and widespread business of many concerns in this industry, variations in volume of production have immediate and sharp repercussions upon interstate commerce in crude oil and gasoline, and particularly upon prices in interstate transactions (*supra*, pp. 68–85). Not only is the prosperity and very existence of a large part of this vast interstate trade threatened by the price fluctuations which flow from changes in volume of production, but uncon-

trolled production in "flush", low-cost producing areas causes a diversion in the interstate movement of oil from areas of higher-cost "stripper" wells (*supra,* pp. 92–95). It also leads to the abandonment of these wells and the elimination of interstate commerce in their products (*supra,* p. 92–95). Finally, the States alone, due to their conflicting interests, cannot or will not exercise any effective, coordinated control (*supra,* pp. 97–105). It is submitted that the real and serious effect upon interstate commerce thus shown justifies Congress in protecting that commerce by controlling production in the manner set forth in the code for the petroleum industry.

A striking illustration of the exercise of Federal power to control local activity affecting the price of commodities in interstate commerce is *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1. This case involved the Grain Futures Act, which regulated contracts for sales of grain for future delivery, most of which, this Court said (p. 36), "do not result in actual delivery, but are settled by offsetting them with other contracts of the same kind." The sales were between buyers and sellers in the city of Chicago; but it was contended that these sales of futures affected the price at which cash grain was sold throughout the country. Thus the question was not one of regulating the movement of a commodity in interstate commerce, or of directly regulating the price of a commodity moving in inter-

state commerce, but of regulating purely local activity which Congress had found (see pp. 4–5) affected the price of commodities moving in interstate commerce and caused price fluctuations which burdened and obstructed interstate commerce. In the words of the Court (p. 36), the questions presented were whether such speculative sales were subject to "abuses which are a burden and obstruction to interstate commerce in grain", and whether such burden and obstruction "can be said to be direct." In giving an affirmative answer to these questions the Court said (pp. 39, 40):

> Manipulations of grain futures for speculative profit * * * exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only * * * justifiable hedging but disturb the normal flow of actual consignments.
>
> * * * * *
>
> If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced,[69] it would seem to follow that manipulations of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in

[69] The reference is to *United States* v. *Patten*, 226 U. S. 525, sustaining the validity of an indictment under the Sherman Act charging a corner in contracts for the future delivery of cotton on the New York Cotton Exchange.

> that commerce are equally direct. The question of price dominates trade between the States. *Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it.* (Italics ours.)

If Congress can regulate sales (not made in the course of interstate commerce) which affect the country-wide price and thereby the country-wide commerce in grain, it would seem to follow that Congress can regulate the production of oil, which affects the country-wide price of that commodity and, more directly than in the case of dealings in grain futures, interstate commerce therein.

The charges made by commission men, dealers, and traders for their services in buying, selling, and handling cattle, sheep, and hogs on a stockyards, which Congress can regulate (*Stafford* v. *Wallace,* 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420) can hardly be said to burden or affect interstate commerce as vitally as the volume of oil production affects prices of oil products in interstate sales and the character and direction of the movement of these products in interstate commerce.

Certain cases arising under the Interstate Commerce Act also show that the commerce power warrants Federal regulation of local acts although these acts affect interstate commerce only remotely. *Colorado* v. *United States,* 271 U. S. 153, sustained an order of the Interstate Commerce Commission au-

thorizing an interstate railroad to abandon operation of an unprofitable branch line lying wholly within a State. The order was sustained upon the theory that losses incurred in operating the branch line might prejudice the carrier's ability to serve interstate commerce efficiently, but the Court did not find it necessary to set forth the extent of the local operating losses or their relation to the carrier's gross or net income. *Florida* v. *United States,* 292 U. S. 1, sustained an order of the Commission which set aside certain intrastate log rates upon the ground that they were unremunerative and therefore discriminated against interstate commerce, although over a two-year period the Commission's order increased the carrier's revenue by less than $\frac{1}{10}$ of 1% of its total freight revenue during approximately the same period.[70]

In *United States* v. *Ferger,* 250 U. S. 199, where the defendant was indicted for forging interstate bills of lading, this Court rejected the defense that the statute could not be constitutionally applied to a forgery which did not represent or relate to any actual or contemplated interstate commerce, saying (p. 203) that the commerce power—

---

[70] The carrier's total freight revenue for the years 1929 and 1930 was $99,616,669. (*Georgia Public Service Comm.* v. *Atlantic Coast Line R. R. Co.*, 186 I. C. C. 157, 166.) During the period February 8, 1929, to January 31, 1931, the carrier's revenue from the rates prescribed by the Commission exceeded that which would have been collected under the lower rates which the Commission set aside by $290,283. (*Ibid*, p. 167.)

> must include the authority to deal with obstructions to interstate commerce * * * and with a host of other acts which, because of their relation to and influence upon interstate commerce, come within the power of Congress to regulate, although they are not interstate commerce in and of themselves.

It can hardly be questioned that the production of oil under the circumstances shown here has a more direct and substantial "relation to and influence upon interstate commerce" than the circulation of forged bills of lading.

Cases under the Sherman Act are of particular significance to questions at issue here. Restraints of trade and monopolistic combinations are held to be within that Act and within the commerce power of Congress if they substantially affect interstate commerce, although the means by which the restraint is carried out operate before interstate commerce has begun (*Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310; *Standard Oil Co.* (*Indiana*) v. *United States,* 283 U. S. 163, 169) or after it has ended (*Bedford Cut Stone Company* v. *Journeymen's Stone Cutters' Association,* 274 U. S. 37, 46–47; *United States* v. *Brims,* 272 U. S. 549; *Loewe* v. *Lawlor,* 208 U. S. 274, 301). In *Local 167* v. *United States,* 291 U. S. 293, involving a conspiracy in violation of the Sherman Act to restrain sales and movement of live poultry within the metropolitan area of New York City, the Court said (p. 297):

> It may be assumed that some time after delivery of carload lots by interstate carriers to the receivers the movement of the poultry ceases to be interstate commerce [citing cases]. But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the State of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce.

The Sherman Act is based upon the assumption that interstate commerce is best protected from the evils of monopoly and price control by the maintenance of competition. One of the evils which Congress sought to prevent was the creation of combinations clothed with power to affect the consuming public injuriously through the exaction of monopoly prices. In few of the cases did the culmination of this evil appear to be imminent. The Federal power was exerted to prevent acts which tended to create monopolies, which in turn *might result in* exaction of monopoly prices. And it has been held that Congress had the power, in carrying out the policies embodied in that statute, to prohibit local acts (including interruption of or restraint upon production) which affected interstate commerce directly or substantially. In the Recovery Act, Congress adopted the view that, under the conditions then prevailing, interstate commerce

might require protection against the demoralization resulting from overproduction or nonremunerative prices. It should equally have the power, in carrying out this policy, to regulate local acts (including production) when they affect interstate commerce directly or substantially.

The Sherman Act and the Recovery Act are thus based upon different conceptions of sound economic policy or upon the view that differing industrial and economic conditions call for the application of different remedies. But both have the same objectives, protection and promotion of interstate commerce. And there can be no difference in constitutional power where the purpose is to protect interstate commerce against high prices and where the purpose is to protect it against low prices. It is the function of Congress to choose between economic theories and to determine the particular policy deemed necessary for the protection of interstate commerce. *Northern Securities Co.* v. *United States,* 193 U. S. 197, 337.

United Mine Workers v. *Coronado Coal Co.,* 259 U. S. 344, and *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, show that even comparatively minor dislocations of interstate commerce resulting from local acts may be sufficiently direct and substantial to warrant regulation under the commerce power. The plaintiffs in these cases brought suit for triple damages under the Sherman Act against officers of a labor union and against

the union, charging that they had conspired to restrain the plaintiffs' interstate trade in coal and had effected such restraint by destroying valuable mining properties. In the first case this Court held that restraint of interstate commerce had not been established and the verdict for the plaintiffs was therefore reversed. After citing certain cases, the Court said (259 U. S. 344, 408):

> It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain or burden it, it has the power to subject them to national supervision and restraint.

At the second trial, evidence was presented that one of defendants' purposes had been to destroy the power of the plaintiffs to send their nonunion output (about 5,000 tons a day) into interstate commerce to compete with the product of union mines. This Court thereupon reversed a directed verdict for the defendants, stating (268 U. S. 295, 310):

> The mere reduction in the supply of an article to be shipped in interstate commerce by the illegal or tortious prevention of its manufacture or production is ordinarily an indirect and remote obstruction to that commerce. But when the intent of those unlawfully preventing the manufacture or production is shown to be to restrain or control *the supply* entering and moving in interstate commerce, or *the price* of it in interstate

markets, their action is a direct violation of the Anti-Trust Act.[71] (Italics ours.)

There is a close parallel between the second *Coronado* case and the case at bar. In the one, the justification for Federal control is the effect upon commerce of a stoppage of production; in the other, it is the effect upon commerce of overproduction. In the one, the exercise of Federal power was occasioned by conditions which concerned production of an insignificant portion of the country's coal resources, coupled with a possible slight effect upon price. In the other, Federal power has been exercised by reason of the fact that conditions governing oil production present a constant threat to the entire fabric of interstate commerce in that commodity.

In *Standard Oil Co. (Indiana)* v. *United States,* 283 U. S. 163, certain oil companies had pooled their patents for the processing of gasoline by "cracking", and had agreed upon uniform licenses for refineries. The Government alleged in a suit brought

---

[71] A Congressional mandate will serve the same purpose in positive regulation as the intent required to be shown in cases under the Sherman Act. See *Stafford* v. *Wallace,* 258 U. S. 495, where the Court said (p. 520):

> The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint.

under the Sherman Act (p. 165) that the defendants were restraining interstate commerce by controlling that part of the supply of gasoline which was produced by the cracking process. While this Court held that the agreement did not constitute an unreasonable restraint of trade, it pointed out that if the defendants' acts had tended to limit the supply of gasoline, they would have been within Federal power. The Court said (p. 169):

> Moreover, while manufacture is not interstate commerce, agreements concerning it which tend to limit the supply or to fix *the price* of goods entering into interstate commerce, or which have been executed for that purpose, are within the prohibitions of the Act. *Swift & Co.* v. *United States,* 196 U. S. 375, 397; *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 310; *United States* v. *Trenton Potteries Co.,* 273 U. S. 392. (Italics ours.)

The analogy between the kind of situation dealt with under the Sherman Act and the present case may be demonstrated by a hypothetical illustration. If the producers in the East Texas field were to enter into an agreement which provided for assigning a quota to each producer and for limiting his output to such quota, in order that petroleum prices might be raised throughout the country, there would be little question that such an agreement would constitute a restraint of interstate commerce within the Sherman Act, provided the re-

straint was an unreasonable one.[72] If Congress has the power to forbid production control under a statute which treats high prices as detrimental to interstate commerce, it must have the power to curb excessive production under a statute which treats low prices as detrimental to interstate commerce.

It has previously been shown (*supra*, pp. 92–95) that overproduction of oil diverts the flow of commerce from the output of high cost "stripper" wells to the output of low cost "flush" wells. This diversion of commerce from one area to another is analogous in its effect upon interstate commerce to the diversion in time of shipment which results when local acts cause a commodity like grain either to be then consigned in interstate commerce or to be withheld from such commerce. See *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 38–40.

It has also been shown (*supra*, pp. 92–95) that the diversion of commerce caused by the low prices resulting from "flush" production force the abandonment and permanent loss of "stripper" wells.

---

[72] *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, involved the legality under the Sherman Act of an agreement of certain producers of bituminous coal to sell all of their coal through a common selling agency, which agency, if it could not sell the entire output of the companies represented, was to apportion available orders among them upon a stated basis. In substance, though not in form, this was an agreement to limit production since no producer would mine more coal than he had opportunity to sell. While this Court held that the agreement did not unreasonably restrain trade and therefore did not violate the Sherman Act, it assumed that an agreement of this character was within the commerce power of Congress.

These conditions are directly destructive of commerce. What this Court said in *Appalachian Coals, Inc.* v. *United States* (*supra,* p. 372) is directly applicable here:

> The interests of producers and consumers are interlinked. When industry is grievously hurt, when producing concerns fail, when unemployment mounts and communities dependent upon profitable production are prostrated, the wells of commerce go dry.

This Court has said that "commerce among the States is not a technical legal conception, but a practical one, drawn from the course of business." *Swift and Co.* v. *United States,* 196 U. S. 375, 398. With the extraordinary increase in the facilities for and the rapidity of communicaton and transportation, the interaction of forces governing production and forces determining the movement of goods in commerce has been greatly increased. By reason of these changes, matters such as the production of oil which formerly may have been beyond the commerce power may now be within it, because their effect upon interstate commerce has become more direct, immediate, and powerful. In *Stafford* v. *Wallace,* 258 U. S. 495, it was recognized that the practical course of interstate business had expanded with the growth of the country. The words of this Court (pp. 518–519) are directly applicable here:

> The application of the commerce clause of the Constitution in the *Swift Case* was the

result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control. This Court declined to defeat this purpose in respect of such a stream and take it out of complete national regulation by a nice and technical inquiry into the non-interstate character of some of its necessary incidents and facilities when considered alone and without reference to their association with the movement of which they were an essential but subordinate part.

The principles of the *Swift Case* have become a fixed rule of this court in the construction and application of the commerce clause.

Intrastate transactions can be regulated by the Federal Government where these transactions are so interwoven with interstate commerce that the latter cannot be effectively regulated without control of the former. *Minnesota Rate Cases,* 230 U. S. 352; *Houston E. & W. Texas Ry. Co.* v. *United States,* 234 U. S. 342. Crude oil which is sold within the State of production and crude oil shipped to another State or sold without the State of production are of precisely the same character and

are used for the same purpose.[73] The producer whose oil is sold within the State of production draws his oil from the same pool as one whose oil is sold without the State and, if the former producer increases his production, he compels the latter likewise to increase in order to avoid losing his share of the oil within the pool. The oil of the former producer contributes to the total supply and affects the interstate price regardless of where it is sold or consumed. It either competes directly with oil moving in interstate commerce or, if it fills a merely local demand, it forces other oil into the channels of interstate commerce. No effective regulation of interstate movement or price is therefore possible without control of the sources of supply, which inevitably condition every interstate aspect of the industry. And since it has been shown that the volume of production affects every aspect of the industry and that difficulties engendered at this central point spread out and adversely influence the entire field of interstate and intrastate commerce in oil and oil products, under these circumstances, it is submitted that the Federal Government is not required by the Constitution to

---

[73] See *Standard Oil Co. (Indiana)* v. *United States*, 283 U. S. 163, 176–177, where the Court pointed out that ordinary or straight-run gasoline is indistinguishable from gasoline made by the cracking process and that the two are either mixed or sold interchangeably, so that the defendants could not effectively control the supply or fix the price of cracked gasoline unless they could control total gasoline production from all sources.

confine itself to the symptoms manifesting themselves in interstate commerce, but it may undertake the only kind of protection of commerce which is adequate, and deal with the difficulty at its source, through control of production.

This Court has held in cases under the Interstate Commerce Act that the Federal power may be extended over local activities which must be regulated in order to insure the economic well-being of the interstate railroads. In dealing with the rate-making power of the Interstate Commerce Commission this Court has repeatedly sustained the power of the Commission to regulate intrastate rates, not only for the purpose of removing discriminations against persons or localities, but also to insure an adequate *interstate* transportation system. See *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy Railroad Co.*, 257 U. S. 563; *Dayton-Goose Creek Ry.* v. *United States*, 263 U. S. 456; *United States* v. *Louisiana*, 290 U. S. 70; *Florida* v. *United States*, 292 U. S. 1.

The power to promote commerce is not limited to the fostering of agencies of transporation; ever since *Gibbons* v. *Ogden*, 9 Wheat. 1, it has been recognized that commerce is much broader than transportation. It follows that if the Federal Government can regulate intrastate rates in order to insure an adequate interstate transportation system, it should equally have the power to regulate intrastate activity in order to insure the economic well-being of interstate industries other than railroads.

It is true that the railroad cases involve an application of Federal power to persons who are themselves engaged in interstate commerce. It is submitted, however, that the principle therein embodied is applicable to all those elements in an interstate industry the regulation of which is essential to the well-being of the industry.[74]

---

[74] Mr. Justice Johnson in his concurring opinion (9 Wheat. 1, 229–230) defined commerce as follows:

> Commerce, in its simplest signification, means an exchange of goods; but in the advancement of society, labor, transportation, intelligence, care, and various mediums of exchange, become commodities, and enter into commerce; the subject, the vehicle, the agent, and their various operations, become the objects of commercial regulation.

That the commerce clause was intended by the framers of the Constitution to apply to those subjects requiring national legislation with which the States were separately incompetent to deal is indicated by the history of the clause in and at the time of the Constitutional Convention. See Stern, That Commerce Which Concerns More States Than One, 47 Harvard Law Review, p. 1335 (June 1934). In the *Minnesota Rate Cases*, 230 U. S. 352, 398, the Court said:

> The words "among the several States" distinguish between the commerce which concerns more States than one and that commerce which is confined within one State and does not affect other States. "The genius and character of the whole government," said Chief Justice Marshall [quoting from *Gibbons* v. *Ogden*, 9 Wheat. at 195] "seem to be, that its action is to be applied to all the external concerns of the nation, and to those internal concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government."

See also *Gibbons* v. *Ogden*, 9 Wheat. 1, 194, 195; *Second Employers' Liability Cases*, 223 U. S. 1, 46.

Finally, the emergency conditions existing at the time of the enactment of the Recovery Act, and still existing, may have the effect of rendering certain types of transactions which in normal times have only an indirect or incidental effect on interstate commerce, matters of great moment and powerful effect. In the national emergency, the situation had to be viewed as a whole. When overcapacity, overproduction, cut-throat competition, and various unfair trade practices existed side by side with unemployment and reduced purchasing power, and as a consequence the commerce of the country was crippled (*infra,* pp. 130–133), Congress might reasonably conclude that drastic action commensurate with the needs of the situation was required. In *Stafford* v. *Wallace,* 258 U. S. 495, 521, this court, speaking of ordinary times, said that it "will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly nonexistent." The doctrine that while emergency does not create power, emergency may furnish the occasion for the exercise of power, has been applied to the interpretation of, not only the due process clause (*Block* v. *Hirsh,* 256 U. S. 135; *Levy Leasing Co.* v. *Siegel,* 258 U. S. 242), but the constitutional provision that no State shall pass a law impairing the obligation of contracts (*Home Building & Loan Association* v. *Blaisdell,* 290 U. S. 398, 426), and the commerce clause (*Wilson* v. *New,*

243 U. S. 332, 348).[75] An emergency, while not creating powers, may nevertheless bring to the attention of Congress and the courts conditions and relationships not previously recognized which call for the application of powers admittedly in existence.

The particular provisions with which the Court is concerned in the case at bar are but a small part of a wide-spread effort to rehabilitate commerce and industry inaugurated under the Recovery Act. In Section 1 of that Act Congress found that:

> A national emergency productive of wide-spread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist.

---

[75] In *Home Building & Loan Association* v. *Blaisdell*, 290 U. S. 398, 426, after referring to the commerce case of *Wilson* v. *New*, 243 U. S. 332, the Court said:

> The constitutional question presented in the light of an emergency is whether the power possessed embraces the particular exercise of it in response to particular conditions. * * * When the provisions of the Constitution, in grant or restriction, are specific, so particularized as not to admit of construction, no question is presented. * * * But where constitutional grants and limitations of power are set forth in general clauses, which afford a broad outline, the process of construction is essential to fill in the details.

Ex parte Milligan, 4 Wall. 2, relied upon by petitioners, involved a provision " of the Constitution [the habeas corpus clause] * * * so particularized as not to permit of construction.

It was declared:

> * * * to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof. * * *

In this statement Congress manifested its appreciation of the fact that the general industrial depression had severely burdened interstate commerce and that interstate commerce could not be substantially benefited without an effort to strike at the causes of the depression.

The evident purpose of the Recovery Act and the declaration of Congress are sufficient to distinguish the case of *Hammer* v. *Dagenhart,* 247 U. S. 251, which denied the power of Congress to prohibit the interstate shipment of products of child labor. As that case was interpreted by this Court in *Brooks* v. *United States,* 267 U. S. 432, 438, the child labor law was held unconstitutional because in that legislation Congress was not really attempting to regulate interstate commerce, but was attempting "to regulate labor in the State of origin by an embargo on its external trade." Since this Court concluded that Congress was not there concerned with protection of interstate commerce, but that its purpose was to control the social policy of the various States with respect to mining and manufacture, the statute could not escape invalidity because it was cast in the form of a

regulation of interstate commerce. See *Hill* v. *Wallace,* 259 U. S. 44; *Bailey* v. *Drexel Furniture Co.,* 259 U. S. 20. In Title I of the Recovery Act, on the contrary, Congress not only declared its purpose to be to free interstate commerce from the burdens which shackled it, but the provisions of the title and the circumstances under which it was enacted plainly evidence this purpose.

Hammer v. *Dagenhart* may also be distinguished upon the ground that no attempt was made to show that the employment of child labor had any substantial effect upon interstate commerce in the articles of manufacture. It was contended that factories in States which prohibited child labor were placed in an unequal competitive position with factories in other States because of interstate commerce in the goods manufactured, but there was no suggestion that the practice aimed at burdened, obstructed, or diminished the flow of interstate commerce.

II

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE REASONABLE REGULATIONS DESIGNED TO ACHIEVE PROPER OBJECTIVES OF THE FEDERAL GOVERNMENT, OF VITAL CONCERN TO THE NATION; THEY DO NOT, THEREFORE, INVOLVE ANY INFRINGEMENT OF THE RIGHTS GUARANTEED BY THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT

In the recent case of *Nebbia* v. *New York,* 291 U. S. 502, this Court has defined the scope of the Fifth Amendment as a limitation upon the power

of the Federal Government in the following language (p. 524–525):

> Thus has this court from the early days affirmed that the power to promote the general welfare is inherent in government. Touching the matters committed to it by the Constitution, the United States possesses the power, as do the states in their sovereign capacity touching all subjects jurisdiction of which is not surrendered to the federal government, as shown by the quotations above given. These correlative rights, that of the citizen to exercise exclusive dominion over property and freely to contract about his affairs, and that of the state to regulate the use of property and the conduct of business, are always in collision. No exercise of the private right can be imagined which will not in some respect, however slight, affect the public; no exercise of the legislative prerogative to regulate the conduct of the citizen which will not to some extent abridge his liberty or affect his property. But subject only to constitutional restraint the private right must yield to the public need.
>
> The Fifth Amendment, in the field of federal activity, and the Fourteenth, as respects state action, do not prohibit governmental regulation for the public welfare. They merely condition the exertion of the admitted power, by securing that the end shall be accomplished by methods consistent with due process. And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary, or capricious, and that the means

selected shall have a real and substantial relation to the object sought to be attained.

"The object sought to be attained" by the provisions of the Petroleum Code here in question, though such provisions are to be dealt with largely on the basis of the special conditions obtaining in the oil industry, must, nevertheless, be considered in the light of all of the purposes of the Recovery Act under the authority of which the Petroleum Code was promulgated. That Act was expressly designed to remove obstructions to interstate and foreign commerce brought on by a long-continued depression of unparalleled severity. The existence of a national emergency and its effect upon interstate and foreign commerce and upon the welfare of the American people was expressly declared by Congress in the Act (Sections 1 and 2 (c), *supra,* pp. 7–9).

This Court has already had occasion to take notice of the crisis which confronted the nation in the spring of 1933. *Appalachian Coals, Inc.* v. *United States,* 288 U. S. 344; *Home Building & Loan Ass'n* v. *Blaisdell,* 290 U. S. 398. Years of declining business activity [76] and mounting insol-

[76] From an average of 119 for the year 1929 (1923 to 1925=100) industrial production had dropped to 63 in February 1933. (Department of Commerce, Bureau of Foreign and Domestic Commerce, World Economic Review, 1933, p. 84 (from Federal Reserve Board indices).) Construction activity had dropped from 117 in 1929 to 19 in February 1933, and to even lower levels in the succeeding months. (*Id.* p. 112 (from Federal Reserve Board indices).)

vencies and bank closures had culminated in March of that year, with the closing by Presidential proclamation of the banks throughout the country. Prices had fallen drastically.[77] Millions had been thrown out of employment, and the wages of many of those still employed had fallen below the subsistence level.[78] These persons and their families were dependent for their very existence upon public and private charity. In an effort to survive during this period of low business activity, businesses everywhere resorted to drastic wage cuts and other methods of reducing labor costs in the attempt to maintain or increase their output at a lowered cost of production, and engaged in almost every conceivable type of unfair competitive practice.

---

[77] Commodity prices fell from 95.3 in 1929 (1926=100) to 59.8 in February, 1933. (World Economic Review, *supra*, at p. 92 (from Bureau of Labor Statistics).)

[78] The number of unemployed in March 1933 has been estimated by the American Federation of Labor at 13,689,000, by the Cleveland Trust Company at 13,833,000, and by the Alexander Hamilton Institute at 17,169,000. (Proceedings of 53d Ann. Convention of Am. Fed. of Labor, p. 312; Business Conditions Weekly, Mar. 10, 1934; Clev. Trust Co. Business Bulletins, Jan. 15, 1934.) The estimates of the American Federation of Labor show an increase in unemployment from January 1930 to March 1933 of over 10,000,000; the estimates of the Cleveland Trust Company show an increase in unemployment during this same period of over 10,800,000; the estimates of the Alexander Hamilton Institute show a rise in unemployment of over 13,000,000 from 1929 to March 1933.

The number of persons employed in factories fell from 101 in 1929 (1923 to 1925=100) to 59.4 in February 1933.

Prices, wages, and employment were driven to lower and lower levels. The extent of the decline of purchasing power is indicated to some extent by the drop in the national income. The income received by individuals in the United States declined from 81 to 49 billion dollars, or 40%, from 1929 to 1932. (Sen. Doc. No. 124, 73d Cong. 2d Sess., National Income, 1929–1932, p. 10.[79]) In those industries in which it was possible to segregate wages from other payments (mining, manufacturing, construction, and transportation) the decline from 1929 to 1932 in wage payments was from 17 billion to $6,840,000,000, or 60%. (*Id.*, at p. 14.)

The full extent of the effect of all of these factors upon interstate commerce is roughly indicated by the decline in railway freight traffic. The aggregate of whole carloads of freight declined from 52,827,925 carloads in 1929 to 28,200,000 in 1932, a decline of 46%. (Information Bulletin No. 639 of Car Service Div. of Am. Ry. Ass'n.) Revenue

---

(World Economic Review, *supra*, at p. 101 (from Federal Reserve Board indices).) The total pay rolls dropped even further than the total number of persons employed—from 107 in 1929 (1923 to 1925=100) to 40 in February 1933. (*Id.*, at p. 102 (from Federal Reserve Board indices).) The average weekly earnings of factory employees in 25 selected industries fell from $28.54 in 1929 to $16.13 in February 1933. (*Id.*, at p. 107 (from National Industrial Conference Board).)

[79] This report shows (p. 10) that the greatest previous decline since income data have been tabulated (1909) was in the post-war depression of 1921, when there was a contraction of only 14.4%.

freight originating on Class 1 roads declined from 1,339,091,000 tons in 1929 to 646,223,000 tons in 1932, a decline of 51%. (Department of Commerce, Bureau of Foreign and Domestic Commerce, Statistical Abstract of the United States, 1933, p. 357.[80])

In Title I of the Recovery Act Congress sought to remedy the conditions which had thus grievously affected interstate commerce. It declared its objectives in the following language (Section 1):

> It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under ade-

[80]Although available records do not distinguish between intrastate and interstate traffic, it is well known that railway traffic is predominantly interstate and only to a minor extent intrastate. While part of the decline in railway traffic is doubtless attributable to the increase in motor-truck traffic, the competition of motor transportation is mainly with the intrastate traffic of railroads. Intercity truck traffic is only about 20% interstate (Coordination of Motor Transportation, 182 I. C. C. 263, 377). Moreover, the competition of truck traffic affects primarily the *less-than-carload* traffic of the railroads and total carloading figures do not reflect to any considerable extent the increase in the competition of truck traffic. It may fairly be said, therefore, that the decline in total carloadings represents more or less accurately the effect of the depression itself upon railroad traffic.

> quate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

These objectives were to be achieved wherever possible by cooperation from industrial groups. Sections 3 (a) and (b) of the Act, therefore, provide that any trade or industrial association or group truly representative of the trade or industry concerned may submit a code of fair competition the provisions of which, when approved by the President, shall become the standards of fair competition for that trade or industry. Express provision is made to assure that such codes would not be employed to eliminate or oppress small enterprises or to permit monopolies or monopolistic practices. (Section 3 (a).) It was manifestly impossible for Congress to provide detailed legislation for each trade or industry. Moreover, any attempt at such legislation would have delayed other national measures which the public welfare demanded (*infra*, pp. 151–152). It was not unreasonable, arbitrary, or capricious for Congress to conclude that the protection of interstate and foreign commerce required

prompt and simultaneous action with respect to the hundreds of trades and industries whose activities had so injuriously affected the free flow of such commerce, and that the ends sought to be attained could be achieved by means of the formulation of codes at the instance of the industries or trades themselves.

In the case of the oil industry the need for prompt measures was particularly acute. The peculiar conditions governing the production of oil had caused the complete demoralization throughout the country of the price structure of this industry. The States had proved themselves incapable of regulating these conditions and their conservation laws were being flagrantly disregarded. Destructive competition prevailed throughout all branches of the industry. In this competitive struggle the ability of the large integrated companies, because of their large financial resources, to balance losses in one section of the country with profits obtained elsewhere threatened the extinction of the small producers, refiners or marketers. See Petroleum Development and Technology, 1931, American Institute of Mining and Metallurgical Engineers (Logan, Stabilization of Petroleum Industry) p. 617. Production from the "flush" fields had absorbed a large part of the national market of the "stripper" well areas, throwing many men out of employment, and was bidding fair at the time of the adoption of the Petroleum Code to monopolize

the entire national market of most of the wells in the "stripper" areas. (*Supra,* p. 93.) The consuming public had received small benefit from the severe decline in prices. During the period when crude oil dropped to a few cents a barrel the average retail price of gasoline had dropped only a few cents a gallon.[81]

Tremendous wastes of this important natural resource had resulted from the severe break in the price structure. The decline in prices below the lifting cost in the "stripper" well areas had caused the irretrievable loss of valuable reserves of oil and threatened still further losses. (*Supra,* p. 94.) Lower prices, themselves caused by excessive production from the flush fields, had compelled even greater production in these fields (*supra,* p. 70) resulting in the premature exhaustion of the reservoir energy so essential to the maximum recovery of oil and greatly diminishing the amount of oil recoverable from these fields. (Report on Pipe Lines, *supra,* at pp. ix–xii, Appendix B, pp. 22–27; Federal Oil Conservation Board, Report III

[81] When the price of crude oil fell to extremely low levels between January and August 1931, the average retail price of gasoline to the consumer dropped only 2.35 cents; the drop in retail prices during the collapse of crude prices in 1933 was only 1.72 cents. See Oil and Gas Journal, January 25, 1934 (Smiley, All Records Smashed in 1933 When Motorist Paid Only 12.76 Cents for His Motor Fuel) p. 42. In this article is a table showing average service-station prices of gasoline, excluding taxes, for 50 representative cities by months for the years 1931, 1932, and 1933.

(1929), p. 21 *et seq.*, Appendix B, pp. 92–95; Petroleum Development and Technology, 1934, American Institute of Mining and Metallurgical Engineers (Umpleby, Efficient Utilization of Reservoir Energy) p. 168.) Such excessive forcing of the flush fields had led to the blowing and burning of billions of cubic feet of natural gas, rich in energy and gasoline content. See Report on Pipe Lines, *supra,* at p. x, Appendix B, pp. 22–23. Excessive production had resulted in the accumulation of large stocks of oil which faced losses through fire and evaporation (Petroleum Development and Technology, 1932, American Institute of Mining and Metallurgical Engineers (Umpleby, Changing Concepts in the Petroleum Industry) pp. 38, 41). Excessively low prices had stimulated inefficient refining processes (R. 82). With crude at extremely low prices refiners found it more profitable to extract by skimming only 20% to 30% of gasoline, than to employ the improved refinery technology which has made it possible to secure by cracking upwards of 50% of gasoline. (Federal Oil Conservation Board, Report V (1932), pp. 27–29; Pogue, Economics of Petroleum, pp. 77, 145.)[82] Since gasoline is the

[82] "Where the crude is used in the raw state, practically the whole output is fuel oil. With topping or skimming refining in its various stages, from 50 to over 90 percent of the raw material is turned out as fuel oil. With transition to complete refining, the proportion of fuel oil becomes decreasingly less and partly of a superior quality (distillate gas oil); and when cracking refining is introduced, fuel oil (or

major product of petroleum, it is apparent that any reduction in the amount of gasoline recovered constituted as serious a waste as the abandonment of the oil in the ground or its waste by evaporation or burning on the surface. After a small yield of gasoline had been skimmed from the crude, the remainder must be sold as fuel oil or other products. This inferior use of petroleum products was largely responsible for the supplanting of coal as an industrial fuel and had seriously affected interstate commerce in coal. See *Appalachian Coals, Inc.* v. *United States*, 288 U. S. 344, 351, 361.

These wastes, which followed in the wake of a demoralized price structure brought on by the competitive conditions inherent in the production of oil, were of particular concern to the nation because of the limited supply of this important natural resource. It cannot be said with certainty when the supply of petroleum in the United States will be exhausted, but all available estimates agree that the known fields will not supply the national consump-

---

rather its preferred variety, gas oil) becomes in turn the raw material for further refining, and the yield of fuel oil is cut down in still further degree.

"Topping and skimming plants go along with flush conditions in oil-field development. They spring up quickly wherever the supply of crude petroleum is abundant and cheap; they require a relatively small outlay of capital and for a period are profitable, in many instances exceedingly so. With high cost crude, however, they become uneconomic, and either cease to operate or change to plants making a fuller extraction of values." (Pogue, Economics of Petroleum, p. 145.)

tive demands for more than 15 years, the largest estimate of known resources being 12 billion barrels against a national demand of 835,000,000 barrels in 1932. See Geological Survey, Review of Petroleum Industry in the United States,[83] April 1934 (Circular No. 11), p. 2; Bureau of Mines, Minerals Yearbook, 1932–1933, Statistical Appendix, p. 300. The discovery of new fields is necessarily problematical and "the day of exhaustion is merely postponed a few months or a few years by each new discovery". (Federal Oil Conservation Board, Report V (1932), p. 7.)[84] Although substitutes for

---

[83] This publication states that the estimates since 1922 of known resources are as follows (p. 3):

	Billion Bbls.
1922 United States Geological Survey and American Association of Petroleum Geologists (The oil supply of the United States: Dept. Interior Press Notice, 1922)	5.0
1925 American Petroleum Institute (American Petroleum Supply and Demand, p. 3, American Petroleum Institute, 1925)	5.3
1926 Federal Oil Conservation Board (Federal Oil Conservation Board, Report I, p. 8, 1926)	4.5
1932 Federal Oil Conservation Board (Federal Oil Conservation Board, Report V, p. 7, 1932)	10.0
1933 Valentin R. Garfias (Am. Inst. Min. Met. Eng. Trans., Vol. 103, p. 253, 1933)	12.0

[84] "In 1926 the extent of known domestic reserves was about 4½ billion barrels. Reserves made known by later discoveries have raised the current classification of known reserves to 10 billion barrels; future discoveries may raise it further; but the day of exhaustion is merely postponed a few months or a few years by each new discovery. Each year this country consumes or exports some 800,000,000 barrels more than it imports. In other words, as has been said by one authority, the equivalent of from 8 to 10 new pools, each containing 100,000,000 barrels of recoverable oil, must be discovered each year to maintain our present margin of domestic reserves. The wheels of 80 percent of all our

natural oil may be obtained through the manufacture of petroleum from coal, the distillation of oil from shale and the use of alcohol in place of gasoline, no process is known which can compare in cheapness with that of merely tapping reserves already created by nature.[85] See Geological Survey, Review of the Petroleum Industry in the United States, April 1934 (Circular No. 11), pp. 37–50; Federal Oil Conservation Board, Report II (1928),

---

horsepower, fixed and automotive, are turned by the consumption of a resource whose known reserves have never been many years ahead of exhaustion. Although we possess large quantities of substitutes in oil shale and coal, capable of distillation, new processes must be discovered before their refining costs become competitive with costs of producing motor fuel from crude oil." (Federal Oil Conservation Board, Report V (1932), p. 7).

[85] The problem of preventing waste is not simply to prepare for a day decades hence when all oil shall have been exhausted "but to minimize the readjustment to a stage of increasing cost which in some of the older lands has already arrived and in the United States is only a matter of time. The prospect is clear enough to make the prevention of needless waste a major social responsibility. As far as the mineral and power resources are concerned, the long time problem of conservation merges with the immediate social problem of overdevelopment and overproduction. Both are concerned with controlling the wastes of destructive competition. * * * The task of the present day conservationist is to see that any change in economic organization for the control of production which is undertaken to insure steadier profits and wages should also operate to prevent needless waste of the underlying resources." Report of the President's Research Committee on Social Trends, Recent Social Trends in the United States, 1933, Vol. I, pp. 89–90.

pp. 3–9; Report on Pipe Lines, *supra,* at p. viii, Appendix B, p. 19.

Wastes of oil, an exhaustible natural resource, threatened not only the premature extinction of interstate and foreign commerce in petroleum and its products, but also the continued functioning at low cost of those of the nation's transportation agencies which depend for their operation upon an adequate and economic supply of petroleum and its products. Wastes of oil are of particularly vital concern to the nation because of the importance of this natural resource for the national defense in times of war. It is common knowledge that the naval and air forces of the United States require petroleum products for fuel, as do many of the agencies of army transportation. Indeed, so important to the nation is the existence of an adequate supply of oil in time of war that the competitive conditions attending the production of oil might well have been regulated as a peace-time measure to provide for the national defense.

It thus appears that at the time of the passage of the Recovery Act the competitive conditions inherent in the production of oil had demoralized the price structure of the industry throughout the country and that the severe decline in price had in turn contributed to economic wastes of an important irreplaceable natural resource. To carry out with respect to this industry and the competitive conditions therein, the purposes of Congress

expressly declared in the Act, the Petroleum Code was adopted by the industry and approved by the President. The purposes of this Code as stated in its preamble were:

> To meet the emergency in the petroleum industry; to increase employment, establish fair and adequate wages, enlarge the purchasing power of persons related to this industry and improve standards of labor; to conserve the Nation's petroleum resources and to prevent physical and economic wastes which demoralize the national market to the detriment of consumers and producers and to restrain and avoid recurring abuses in the production, transportation and marketing of petroleum and its products which directly obstruct the free flow of interstate and foreign commerce by causing abnormal and disturbing temporary fluctuations in the supply of petroleum or its products that are not responsive to actual demand and prices and disrupt the normal flow of interstate commerce in petroleum and its products; and to prevent the growth of monopoly resulting from unfair competitive practices; and to protect the Nation from an unnecessarily wasteful depletion of this natural resource essential for the national defense and the safety and the continued functioning of the Nation's transportation facilities that are dependent for operation on an adequate and economic supply of petroleum and its products and to accomplish and effectuate the pol-

icies set forth in the National Industrial Recovery Act. * * *

The production-control provisions of the Code, which are here under consideration, were an important, if not the major, means by which these objectives were to be achieved. The conditions in this industry which have previously been described had made it plain that effective control of the competitive forces governing the production of oil as a means of restoring stability to the interstate market structure of the industry, and of eliminating wastes and other abuses resulting from a demoralized market, was essential, if the principal abuses in the industry were to be eliminated or mitigated. It was through the production-control provisions of the Code that control of these competitive forces was sought.

The long series of unsuccessful attempts by the industry and the States to regulate these competitive forces afforded ample basis for the view that effective regulation could be accomplished only by means of national limitation of production to the amount necessary to meet the national consumptive demand for petroleum products. Prior experience of the Federal Oil Conservation Board (*supra,* p. 72) had proved it possible to compute the national demand accurately. The Petroleum Code seeks, moreover, to make use so far as possible of the experience of the States in prorating an estimated demand among the individual fields and wells within

a State. As has been pointed out, the quotas of production directly involved in this case have been fixed not by the Federal Government but by the Railroad Commission of Texas. (*Supra*, p. 15.)

This Court has sustained the power of the States to prorate production to market demand against the claim, analogous to that now made by the petitioners, that such restriction of their production involved a violation of the due process clause of the Fourteenth Amendment. *Champlin Refining Co.* v. *Corporation Commission, supra.*

Based upon the experience of a prior Federal agency in estimating the national demand, making use so far as possible of the power of the States, sustained by this Court, to prorate an estimated market demand among the producers within a State, and designed to achieve objectives which can be accomplished only through the exercise of Federal power, the production-control provisions of the Code are, it is submitted, fully shown to be reasonable regulations aimed at the attainment of purposes within the sphere of Federal power.

III

THE AUTHORIZATION BY CONGRESS OF THE PRESIDENT TO APPROVE CODES OF FAIR COMPETITION IS NOT AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWERS

The doctrine of delegation of powers, based upon the fundamental tripartite division of our Government, prevents Congress from abandoning its constitutional power to the other two branches

of the Government. Accordingly, when the necessities of practical administration require Congress to avail itself of executive or administrative agencies, it must intelligently determine the policies which such agencies are to apply to particular factual situations. The precise degree of detail with which the policies are required to be described by Congress must, of course, vary with the character of the subject of regulation. To require the same minuteness of statement in a statute seeking to control in a short space of time a large number of widely different and ever-changing activities, as in a statute dealing with only one kind of transaction, would be to cripple the legislative branch of the Government in those situations in which legislative action is most needed. The doctrine of delegation of powers was intended to protect and not destroy the power of the legislative representatives of the people.

The emphasis upon practical considerations in determining whether a Congressional delegation of authority is constitutional is found in each of the leading decisions of this Court upon the subject. In no case has the determination by Congress as to the standard to guide the administrators of its laws been overthrown.

Beginning with *Wayman* v. *Southard,* 10 Wheat. 1, this Court, speaking through Chief Justice Marshall, adverted (pp. 34–35, 46–47) to the need for flexibility to conform the Federal practice to the judicial systems of the States in a statute delegat-

ing to the Federal judiciary power to alter the rules as to process as the courts "in their discretion deem expedient" (p. 39). The statute upheld in *Field* v. *Clark,* 143 U. S. 649, permitted the President to impose reciprocal duties on goods imported from countries which discriminated against American products, a function which could best be exercised by a governmental agency capable of swift action after forming a judgment based upon changing conditions. The law sustained in *Buttfield* v. *Stranahan,* 192 U. S. 470, authorized the Secretary of the Treasury to fix standards of purity, quality, and fitness for consumption with which imported tea must comply. The Court declared (p. 496):

> Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave to executive officials the duty of bringing about the result pointed out by the statute. To deny the power of Congress to delegate such a duty would, in effect, amount but to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficaciously exerted.

In upholding the statute authorizing the Secretary of War to determine whether a bridge was an "unreasonable obstruction" to navigation, the Court in *Union Bridge Co.* v. *United States,* 204 U. S. 364, emphasized the fact that "investigations by Congress as to each particular bridge alleged to constitute an unreasonable obstruction to

free navigation and direct legislation covering each case, separately, would be impracticable in view of the vast and varied interests which require National legislation from time to time" (p. 386). A denial of the right of delegation "would be 'to stop the wheels of government' and bring about confusion, if not paralysis, in the conduct of the public business" (p. 387).

Similarly, in *United States* v. *Grimaud,* 220 U. S. 506, the impracticability of having Congress provide general regulations for each of the many different forest reservations was held to justify authorizing the Secretary of Agriculture "to make such rules and regulations * * * as will insure the objects" of such reservations.

The Court said (p. 516):

> In the nature of things it was impracticable for Congress to provide general regulations for these various and varying details of management. Each reservation had its peculiar and special features * * *.

Again, in upholding the section of the Interstate Commerce Act which authorizes the Interstate Commerce Commission to make rules in case of car shortage, the Court declared in *Avent* v. *United States,* 266 U. S. 127 (p. 130):

> * * * the requirement that the rules shall be reasonable and in the interest of the public and of commerce fixes the only standard that is practicable or needed.

See also *Mutual Film Corp.* v. *Ohio Industrial Commission,* 236 U. S. 230, 245; *Mahler* v. *Eby,* 264 U. S. 32, 40; *United States* v. *Chemical Foundation,* 272 U. S. 1, 12.

The emphasis upon the practical need for the delegation is clear in *Hampton & Co.* v. *United States,* 276 U. S. 394. In upholding the Flexible Tariff Act, which authorized the President to adjust tariff rates so that they would correspond to the differences in costs of production here and abroad, the Court took into account the inability of Congress to make the necessary adjustments (p. 404), the need for readjustment because of ever-changing conditions (p. 405) and the uncertainty as to the time when the adjustments should be made (p. 407). By way of analogy, it referred to the fixing of just and reasonable rates by the Interstate Commerce Commission, stating that (p. 407):

> If Congress were to be required to fix every rate, it would be impossible to exercise the power at all.

In view of these considerations, it was held sufficient for Congress to establish a general rule declaring an "intelligible principle" (p. 406):

> In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental co-ordination.

Let us examine briefly the situation confronting Congress in order to determine whether the broad delegation in the Recovery Act was justified by "common sense and the inherent necessities of the governmental co-ordination." The delegation will be found justified (1) by the magnitude of the subject regulated and the need for great flexibility in dealing with different conditions in the various industries, and (2) by the unprecedented economic chaos existing in the spring of 1933, requiring prompt legislative action in many fields.

(1) Congress desired to regulate industry in order to eliminate or mitigate certain evils threatening our whole industrial structure. But these evils took different forms in different industries, and no rigid rule of general application would have been feasible. For Congress to have legislated separately for each industry would have required prolonged study and investigation. Also, flexibility was essential since conditions in all industries are constantly changing. Much more than in the case of bridges and forest reservations (compare *Union Bridge Company* v. *United States,* and *United States* v. *Grimaud, supra*), the attempt at detailed legislation by Congress would have taken so much of its attention and time as to have stopped "the wheels of Government." The only alternative was to establish a flexible procedure applicable generally, which would permit both easy differentiation between industries and rapid amendment to keep up with changing conditions and to correct the mis-

takes which would inevitably be made in commencing a novel program.

The executive branch of the Government alone possessed the needed flexibility. But the executive branch itself would not have sufficient knowledge of conditions to carry the legislative policy into effect by means of such administrative devices as have heretofore been used in filling in the details of legislation. And it would have been impossible to enforce and make effective the program of Congress under the Act without the support and cooperation of the business interests affected. The code device in the Recovery Act was adopted to meet these difficulties. Each industry was to prepare its own code.[86] The President after a hearing to determine

---

[86] Petitioners presumably contend that the Act contains an invalid delegation of legislative power because it provides for approval by the President of codes submitted by the industries. It is submitted that this contention is sufficiently answered by the opinion of the court below which stated (No. 260, R. 189–190):

> The groups could really do nothing but advise the President just as Congress itself often is advised by hearing those to be affected. While a very strong influence is accorded to each group, it is the President's act in approving a recommended Code or imposing an involuntary one that gives it force.

The court below in referring to certain decisions of this Court stated (N. 260, R. 189):

> Congress by the Act of March 2, 1893, enacted that the American Railway Association, a mere trade body, should fix the height of draw-bars for railway cars which was to be established as standard by the Interstate Commerce Commission, but there was thereby no unconstitutional delegation of legislative power. *St. Louis & Iron Mountain R. R. Co.* v. *Taylor*, 210 U. S. 281. By R. S. Sec. 2324, Congress in providing

whether or not the code would carry out the policy of the Act, could approve or disapprove the code, or approve it subject to such conditions as he might deem "necessary to effectuate the policy" declared in the Act. Congress recognized that it could not itself accomplish the task of either formulating or passing upon the many provisions in numerous codes.

(2) Even in a period of normal legislative activity, a broad delegation would have been required. The reasonableness and necessity of the delegation are especially apparent in the light of the emergency situation confronting the first session of the 73d Congress in the spring of 1933 (*supra,* pp. 130–133). During the ten weeks following the banking crisis of March, 1933, Congress was engaged in preparing and passing measures to cope with the depression on many fronts. The banking laws were changed, and a deposit insurance plan established (Banking Act of 1933 (48 Stat. 162)). The sale of securities was regulated (Securities Act of 1933 (48 Stat. 74)). Credit was pumped into the financial and industrial structure through the Farm Credit Act (48 Stat. 257), changes in the Reconstruction Finance Corporation Act (48 Stat. 119,

---

for mining on the public lands enacted that the miners in each district might make regulations not in conflict with law. These regulations come close to being a miners' code of fair competition in staking out claims, but there was no improper delegation of legislative powers to the miners. *Erhart* v. *Boaro*, 113 U. S. 527; *Butte City Water Co.* v. *Baker*, 196 U. S. 119.

141), and the Public Works program (Title II of the Recovery Act). A Federal Emergency Relief Administration (48 Stat. 55) and a national employment system (48 Stat. 113) were established to cooperate with State relief efforts. An attempt was made to help home owners burdened with heavy mortgages (48 Stat. 128). Development of the industrial resources of the Tennessee Valley was authorized (Tennessee Valley Authority Act (48 Stat. 58)). An Act was passed for the relief of the railroads (Emergency Railroad Transportation Act of 1933 (48 Stat. 211)). And finally efforts were made to rehabilitate the economic life of the nation through a direct attack on the evils believed to be afflicting agriculture and industry. In the Agricultural Adjustment Act (48 Stat. 31) and the National Industrial Recovery Act, general principles were laid down for the executive branch of the Government to apply to different commodities and industries.

It is apparent that this broad program would not have been adopted in time to have been of any value if Congress had had to legislate for each industry. Time was of the essence in any attempt to put the 14,000,000 unemployed to work. To have required Congress to legislate for each industry would have prevented any legislation at all. To have adopted a single rule applicable to all industries regardless of their diversities would have been unadvisable, inequitable, and impracticable.

Without such a delegation as is embodied in the Recovery Act no effective legislation would have been possible.

Section 3 (a) of the Recovery Act authorizes the President to approve codes of fair competition upon application of representative industrial associations if he finds that the codes are not designed to promote monopoly, will not oppress small business enterprises, and will tend to effectuate the policy of the Act. The policy of Congress set forth in Section 1 (*supra,* p. 8) is to remove obstructions to commerce through cooperative action of industry and labor, to increase purchasing power, relieve unemployment, improve standards of labor, eliminate unfair competitive practices, utilize the productive capacity of industry as far as possible, "to avoid undue restriction of production (except as may be temporarily required)" and to conserve natural resources. These factors are not separate and unrelated. All fit into the general pattern of the plan to improve business through eliminating practices believed responsible for existing conditions and through increasing the capacity to buy what business sells. The codes were to conform to this policy.

That Congress may employ such general terms as "fair competition" in defining legislative policy is clear from the decisions of this Court upholding statutes authorizing the Executive to act "in the public interest" (*New York Central Securities*

Corporation v. *United States,* 287 U. S. 12, 24; *Avent* v. *United States,* 266 U. S. 127); to fix "just and reasonable" rates or charges (Interstate Commerce Act, Sec. 1, par. 5 (49 U. S. C., Sec. 1, par. 5)); to grant certificates based upon public necessity and convenience (*Colorado* v. *United States,* 271 U. S. 153, 168; *Chesapeake & Ohio Ry.* v. *United States,* 283 U. S. 35, 42; *Federal Radio Commission* v. *Nelson Brothers Bond & Mortgage Co.,* 289 U. S. 266, 285); or to forbid "unfair methods of competition" (Federal Trade Commission Act, Sec. 5 (38 Stat. 719, 15 U. S. C., Sec. 45)).

Such general expressions are not, of course, employed *in vacuo.* This Court has indicated in the most recent cases involving the question of delegation that such terms as "public interest" take on definite substance from their context, the purposes of the statute in which they are found, and the nature of the subject regulated. *New York Central Securities Corporation* v. *United States,* 287 U. S. 12, 24, 25; *Federal Radio Commission* v. *Nelson Brothers Bond & Mortgage Co.,* 289 U. S. 266, 285. In the *Radio* case, the requirement that the Commission act "as public convenience, interest, or necessity requires" was deemed a sufficient criterion because it was (p. 285):

> to be interpreted by its context, by the nature of radio transmission and reception, by the scope, character, and quality of services, and, where an equitable adjustment between

> States is in view, by the relative advantages in service which will be enjoyed by the public through the distribution of facilities.

Similarly, the words "fair competition" in the Recovery Act must be construed in the light of the policies set forth in Section 1 and given expression in other sections of the Act. In this context the words "fair competition" have just as definite although not the same meaning as the phrase "unfair methods of competition" in the Federal Trade Commission Act, in which Act there are no other provisions calculated to fix more precisely the meaning of the phrase.

If the powers granted the Executive by the Recovery Act seem extensive it must be borne in mind that the subject matter with which the Act deals is extensive and complex. It is precisely the magnitude of the problem which makes a broad delegation necessary. It is submitted that no constitutional provision, no decision of this Court, and no accepted political theory or social policy stands in the way of the validity of the present delegation.

IV

THE PRODUCTION-CONTROL PROVISIONS OF THE PETROLEUM CODE ARE AUTHORIZED BY THE RECOVERY ACT

The only provisions of the petroleum code before this Court are those which declare that production in excess of State quotas, fixed in conformity with

the code provisions,[87] shall be deemed an unfair trade practice and a violation of the code. It is submitted that the language of the Recovery Act, its contemporaneous and consistent administrative construction, and the subsequent implied approval of such construction by Congress, show that these code provisions are authorized by the Act.

Section 3 (a) of the Act authorizes the President to approve codes of "fair competition." Certainly prohibition of production which is in violation of State law tends to promote the fairness of competition. The words, "unfair methods of competition", in Section 5 of the Federal Trade Commission Act have been held by this Court to cover a practice which, although not within the reach of the criminal law, is "of the sort which the common law and criminal statutes have long deemed contrary to public policy." *Federal Trade Commission* v. *Keppel & Bro., Inc.,* 291 U. S. 304, 313. *A fortiori,* under the broader scope to be attributed to the words "codes of fair competition" in the Recovery Act, and where the practice prohibited is not merely contrary to public policy but is illegal, prohibition of the practice is within the provisions of

---

[87]As previously stated, the code in article III, sections 3 and 4, prohibits production in excess of State quotas where a Federal agency has estimated the production of crude oil required to balance consumer demand and has allocated such required production equitably among the States, and a State has subdivided the production so allocated to it into pool, lease, or well quotas.

the Recovery Act permitting promulgation of codes of "fair" competition.

If the matter were otherwise doubtful, the fact that the President, his administrative agents, and a representative part of the petroleum industry have concurred in determining that production of oil in excess of State quota is an "unfair" practice, is entitled to great weight. This Court has said that it would hesitate to reject the administrative determination of the Federal Trade Commission that a particular method of competition is unfair. *Federal Trade Commission* v. *Keppel & Bro., Inc., supra,* p. 314.

It is submitted that the provisions of the petroleum code here in question concern not only practices which are "unfair" but also "competition" as that word is used in Section 3 (a). The competition of industrial concerns is not confined to the field of marketing, distribution, and sales, but extends or may extend to every step in the industrial process, including the purchase or other acquisition of raw materials. Due to the peculiar geological and legal factors governing the production of oil (*supra,* pp. 61–66), there is the most intense competition between producers of oil; each producer is in competition with every other near-by producer to obtain for himself the largest possible share of the limited supply of this fugitive product. In this competition the "hot" oil producer has a great advantage over his law-abiding competitor (*supra,* pp. 88–90).

Not only is there, in fact, competition in production, at least in the oil industry, but the provisions of the Recovery Act show that codes of fair competition were intended to permit regulation of production. Section 7 (a) provides that every such code shall contain the condition that "employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President." Section 4 (b)[88] provides that whenever the President shall find that destructive wage cutting is being practiced in an industry, he may, as to such industry, require a license of every person carrying on any business in or affecting interstate or foreign commerce. These wage and hour provisions are stated in general terms and necessarily apply to all employees, whether engaged in production, distribution, or marketing. This shows that codes may embrace competitive practices within the field of production.

It should also be noted that Section 3 (a) permits the President to approve a code of fair competition only if he finds that it "will tend to effectuate the policy" of Title I of the Act. In Section 1 of Title I Congress declares it to be its policy, *inter alia,* "to conserve natural resources." Since codes are the medium through which the policies declared in Section 1 are to be carried into effect, and since unregulated or illegal production of oil

[88] This section by its terms expired one year after the date of the enactment of the Act, i. e., June 16, 1934.

unquestionably wastes and dissipates the nation's oil resources (*supra,* pp. 136–138), prohibition of "hot oil" production in a code regulating fair competition in the oil industry is clearly designed to carry out the purposes of Congress, as expressed in the Act.

Section 1 also declares it to be the policy of Congress "to avoid undue restriction of production (except as may be temporarily required)". This indicates that Congress viewed restriction of production as within the ambit of codes of fair competition, provided such restriction either was not "undue" or was "temporarily required".[89] The code provision here in question cannot be said to be unduly restrictive and the conditions brought about by the potential flush production in the East Texas field temporarily require some measure of production control.

The consistent administrative construction of the Act also leads to the conclusion that code provisions regulating production are authorized by the statute. The first code approved under the Act, that for the cotton textile industry, provides that employers in that industry shall not operate "productive ma-

[89] The President in his message to Congress of May 17, 1933, recommending the passage of the Recovery Act, said (H. Rept. No. 159, 73d Cong., 1st Sess., p. 1):

> My first request is that the Congress provide for the machinery necessary for a great cooperative movement throughout all industry in order to obtain wide reemployment, to shorten the working week, to pay a decent wage for the shorter week, and to prevent unfair competition and *disastrous overproduction.* (Italics ours.)

chinery" for more than two shifts of 40 hours each per week. Since then more than 50 codes have been approved which authorize some measure of control of production.[90] This Court has said that when the meaning of a statute is indefinite or doubtful, "administrative practice, consistent and generally unchallenged, will not be overturned except for very cogent reasons", and that such practice "has peculiar weight when it involves a contemporaneous construction of a statute by the men charged with the responsibility of setting its machinery in motion." *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315.

Finally, it would appear that Congress has, in effect, ratified the restriction of production contained in the oil code. Sections 604 and 605 of the Revenue Act of 1934 (c. 277, 48 Stat. 766–767) levy an excise tax upon the sale of crude oil by the producer and upon the refining or processing of crude oil. Section 604 requires producers to keep such records and make such reports covering production and sale of crude oil as shall be prescribed by regulations promulgated by the Commissioner of Internal Revenue. The section makes these records

[90] This number does not include codes which authorize limitation upon increases in plant capacity. The commonest form of control of production authorized by approved codes is a limitation upon hours of operation of machines or plants, but a few codes, like the petroleum code, authorize limitation of production upon a quota basis. Codes authorizing limitation of production are listed in Appendix B, pp. 182–184.

and reports open to inspection by any agency of the United States or of any State having regulatory power over the production of oil. While the primary purpose of Congress in enacting these sections was to provide revenue, a secondary purpose was to assist Federal and State officers in enforcing laws (including the code) regulating the production of oil.[91] When, therefore, it appears that these revenue provisions were intentionally framed so as to aid in enforcing the provisions of the oil code which restrict production, Congress may be regarded as having impliedly declared that it believed that these provisions were authorized by the Recovery Act. The situation is analogous to the reenactment of a statute with knowledge by Congress of its prior administrative interpretation. Such reenactment is held to indicate legislative approval of the statute as administered. *McCaughn* v. *Hershey Chocolate Co.*, 283 U. S. 488, 492–493; *Massachusetts Mutual Life Ins. Co.* v. *United States*, 288 U. S. 269, 273.

V

SECTION 9 (C) OF THE RECOVERY ACT IS CONSTITUTIONAL

A. Section 9 (c) is within the commerce power of Congress

Section 9 (c) authorizes the President to prohibit the transportation in interstate and foreign

[91] H. Rep. No. 704, 73d Cong., 2nd Sess., pp. 41–42; Hearings, H. R. 7835, Senate Committee on Finance, 73d Cong., 2nd Sess. (Confidential), pp. 121–126; Cong. Rec., vol. 78, pt. 3, p. 3057.

commerce of petroleum and its products produced or withdrawn from storage in excess of the amount permitted by any State law or valid regulation or order thereunder. This section is within the commerce power of Congress. It regulates commerce itself—the movement of oil across State lines or to foreign countries. Since it prohibits only the transportation of oil produced or withdrawn from storage in violation of State law, it does not constitute an attempt to exert the commerce power so as to thwart or control the internal policy of the several States. The court below, in its opinion in the *Amazon* case, said (R. 185):

> Such cooperation between state and central government is not Constitutionally wrong, but right and desirable. The central government was not created to be an opponent and a rival of the state governments, but to be a supplement and a protection to them. Its enumerated powers, although supreme and sometimes exercised to the dissatisfaction of some state, are not misused when by a happy concord of duty these governments can cooperate. The grant to the central government of the power to regulate interstate and foreign commerce is without qualification and in general exclusive of the states, and that government may rightly take up the regulation of a matter at the point where the state government because of this grant must itself cease to regulate.

Prohibition of the use of interstate commerce as an instrumentality for the promotion of violation of State laws, or for the furtherance of injurious or harmful results, has been consistently upheld. When certain States, exercising their general police power, sought to control the transportation and sale of intoxicating liquors within their borders, Congress first made such liquors subject to State laws on arrival, and later made it illegal to transport them into such a State. *In re Rahrer,* 140 U. S. 545; *Clark Distilling Co.* v. *Western Maryland Ry. Co.,* 242 U. S. 311.[92] This Court has sustained laws prohibiting the interstate transportation of diseased cattle (*Thornton* v. *United States,* 271 U. S. 414); lottery tickets (*Champion* v. *Ames,* 188 U. S. 321); adulterated articles likely to deceive or injure purchasers (*Hipolite Egg Co.* v. *United States,* 220 U. S. 45); women for immoral ends, whether for commercial purposes or otherwise (*Hoke* v. *United States,* 227 U. S. 308; *Caminetti* v. *United States,* 242 U. S. 470); prize-fight films (*Weber* v. *Freed,* 239 U. S. 325); goods with misleading labels (*Seven Cases* v. *United States,* 239

[92] These cases clearly indicate, contrary to petitioner's contention in the *Panama* case, that the commerce clause does not require uniformity in its application throughout the country. See also *Cooley* v. *Board of Port Wardens,* 12 How. 299, 319. These cases also dispose of a similar contention that the regulations are invalid because not uniform in that they do not apply to producers and refiners throughout all producing areas in the country.

U. S. 510); and stolen automobiles (*Brooks* v. *United States,* 267 U. S. 432). See also *Rupert* v. *United States,* 181 Fed. 87 (C. C. A. 8th), holding valid an Act of Congress prohibiting transportation *out of* the State of wild game killed in violation of State law.

Petitioners rely upon *Hammer* v. *Dagenhart,* 247 U. S. 251, *supra,* which held invalid an Act of Congress prohibiting interstate transportation of any products of a mine or factory in which, during the preceding 30 days, children of less than certain ages had been permitted to work. The decision appears to be based upon two grounds, (1) that the transportation which was barred was not necessary to the accomplishment of "harmful results" to people of other States and (2) that the necessary effect of the statute was to take from the States the power to control child labor in mines and factories.

It is submitted that Section 9 (c) is distinguishable upon both grounds. As to the latter, it has already been pointed out that Section 9 (c) does not operate to usurp State control over production; on the contrary, it strengthens and aids such control. As to the former, the prohibited transportation directly contributes to harmful results in the States of destination, because oil produced in excess of State quotas is offered for sale below the price of legal oil (No. 260, R. 85, 97, 102–103, 109–110, 120; oN. 135, R. 57–58; pp. 88–90, *supra*), and either

causes the "legal" producer or refiner to lower his price in interstate sales or diverts his interstate business to his "illegal" competitor.

Moreover, *Brooks* v. *United States,* 267 U. S. 432, indicates that interstate transportation may be prohibited under the commerce clause if the prohibited commerce contributes to harmful results in the State of origin. That case upheld the validity of the provisions of the National Motor Vehicle Theft Act making it a crime to transport in interstate commerce a motor vehicle, knowing that it had been stolen. The fact that interstate transportation facilitated escape from detection and punishment, and thereby promoted the local crime of larceny and the individual property losses incident thereto, appears to have been one of the grounds which this Court viewed as justifying the exertion of Federal power in the statute there under consideration. The Court said (pp. 438–439):

> The quick passage of the machines into another State helps to conceal the trail of the thieves, gets the stolen property into another police jurisdiction and facilitates the finding of a safer place in which to dispose of the booty at a good price. This is a gross misuse of interstate commerce. Congress may properly punish such interstate transportation by any one with knowledge of the theft, because of its harmful result and its defeat of the property rights of those whose machines against their will are taken into other jurisdictions.

The transportation prohibited by Section 9 (c) directly contributes to harmful results in the State of origin, by providing an interstate market for oil illegally produced or withdrawn from storage. The prohibitions of that section are therefore designed, similarly to the National Motor Vehicle Theft Act, to prevent a "gross misuse" of interstate commerce; to prohibit the use of the channels of commerce as a means of profiting by illegal activity and of extending its effect into other States; and to preserve property rights threatened by illegal or criminal action.

B. Section 9 (c) is not an unconstitutional delegation of legislative authority

The question of delegation arising under Section 9 (c) is much narrower than that previously discussed (*supra,* pp. 144–155) involved in the approval of codes under Section 3 (a). The kind of transportation which Section 9 (c) authorizes the President to prohibit is explicitly set forth and he is given no discretionary power as to the scope of the prohibition. His discretion is limited to determining when the prohibition shall take effect.

Delegations of this character have been uniformly held to be valid. In *Hampton & Co.* v. *United States,* 276 U. S. 394, *supra,* this Court, in sustaining such a delegation, said (p. 407):

> Congress may feel itself unable conveniently to determine exactly when its exercise of the legislative power should become effective, because dependent on future condi-

> tions, and it may leave the determination of such time to the decision of an Executive * * *.

The law upheld in *Field* v. *Clark,* 143 U. S. 649, and the numerous statutes reviewed in the Court's opinion (pp. 682–692) were of this character. The Tariff Act there sustained authorized the President to remove certain goods from the free list "for such time as he shall deem just", in order to protect American goods against unreasonable or discriminatory duties by foreign countries. In *Interstate Commerce Commission* v. *Goodrich Transit Company,* 224 U. S. 194, the delegation sustained was considerably broader in scope. The Interstate Commerce Commission was authorized to determine both the time when the carriers should be required to maintain a uniform system of accounts and the form in which such accounts should be kept.

The general policies and purposes of the Recovery Act, of which Section 9 (c) is an integral part, govern the President's determination of the time or times during which the prohibition against transportation of hot oil shall be applied. Among those policies and purposes declared in Section 1 of the Act are the conservation of "natural resources", elimination of "unfair competitive practices" and the removal of "obstructions to the free flow of interstate and foreign commerce." The only matter committed to the President is the application of these policies and purposes to the particular

conditions pertinent to the question of Federal prohibition of interstate transportation of "hot" oil. While Congress might have considered an outright prohibition desirable, it was undoubtedly justified in concluding that the situation called for some degree of flexibility and that the Executive was in a better position than Congress to determine when the prohibition should go into effect or should terminate. For example, if a code for the oil industry adopted under Section 3 (a) should provide for and effectuate a balanced and workable control of overproduction of oil and its interstate transportation, or if there should be an unexpected decrease in the production of the more important flush fields, it might well be desirable to allow the particular type of prohibition authorized by Section 9 (c) to remain dormant or to be discontinued after having once been put into operation.

It is submitted that the policies set forth in Section 1 of the Act apply to Section 9 (c) and provide ample guidance for the administration of the narrowly limited powers there granted.

Petitioners in the *Panama* case contend that Section 9 (c) is an invalid delegation of legislative power in that criminal liability thereunder does not arise until the issuance of an order by the President. A similar contention is made with respect to Section 10 (a) of the Act which authorizes the promulgation of rules and regulations and makes violation thereof a crime. That Congress may

make it a crime to violate an administrative order or regulation is clear from the authorities. *Avent* v. *United States,* 266 U. S. 127; *United States* v. *Grimaud,* 220 U. S. 506; *Union Bridge Co.* v. *United States,* 204 U. S. 364; *In re Kollock,* 165 U. S. 526; *Caha* v. *United States,* 152 U. S. 211.

Petitioners in the *Panama* case further contend that Section 9 (c) is invalid as a delegation to the states since it is operative only as to oil produced in violation of state law. The decisions of this Court establish that it does not constitute an invalid delegation of power to predicate a Federal offense upon a violation of state law. *In re Rahrer, supra; Clark Distilling Company* v. *Western Maryland Ry. Co., supra; Ex Parte Siebold,* 100 U. S. 371; *Cooley* v. *Board of Port Wardens,* 12 How. 299.

VI

THE REGULATIONS HERE IN QUESTION ARE IN ALL RESPECTS VALID AND CONSTITUTIONAL

A. The requirement of periodic reports from producers and refiners and the maintenance of books open to inspection is authorized by Section 10 (a) of the Recovery Act as necessary for the enforcement of Section 9 (c) of the Act

The regulations have been described in the statement, *supra,* pp. 16–18. They were issued pursuant to Section 10 (a)[93] of the Recovery Act, which

[93] Petitioners in the *Panama* case base their argument that the Regulations are not authorized by the Act on the mistaken assumption that the regulations were issued under Section 9 (c) alone. Their basis was, in fact, Section 10 (a), which expressly authorizes the promulgation of regulations.

authorizes the promulgation of such rules and regulations as may be necessary to carry out the purposes of Title I of the Act. They were designed to make effective the prohibition contained in Section 9 (c) of the transportation in interstate and foreign commerce of oil or its products produced in violation of state laws. The specific regulatioss involved in these cases require the filing of monthly reports by all producers (Reg. IV) and refiners (Reg. V)[94] and the maintenance by them of books and records open to inspection covering all transactions involvisg the production and transportation of petroleum and the products thereof (Reg. VII). All three regulations are at issue in the *Panama* case, and Regulations IV and VII in the *Amazon* case.

The principal issue raised with respect to the validity of these regulations is as to whether they are necessary to the enforcement of Section 9 (c). The Secretary of the Interior, in promulgating them, made the following finding as to their necessity:

> Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving

[94] As previously stated (*supra*, p. 16), Regulation V was suspended except in the East Texas and Oklahoma City areas, and Regulation IV was suspended excepting in states which require monthly producers' reports. Texas is one of the states requiring monthly producers' reports.

> in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (Public, No. 67, 73d Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases, and shipments are in interstate and foreign commerce or in intrastate commerce (Reg. III, Appendix A, *infra,* p. 221).

Such a finding by the administrative official charged with the enforcement of the statute is entitled to great weight, and his construction of the statute as permitting such regulations "will not be overruled except for weighty reasons." *Fawcus Machine Co.* v. *United States,* 282 U. S. 375, 378. See also *Brewster* v. *Gage,* 280 U. S. 327, 336; *Norwegian Nitrogen Products Co.* v. *United States,* 288 U. S. 294, 315; *Boske* v. *Comingore,* 177 U. S. 459, 470.

The necessity of the regulations here in question, as applied to these petitioners, will clearly appear from a consideration of the difficulties of enforcement confronting the Government in the East Texas field.

(1) *It is essential to enforcement of Section 9 (c) that a system of reports be imposed.*

The very size and complexity of the East Texas field defies any attempt on the part of the Government to detect and prevent interstate shipment of illegal petroleum and of illegal petroleum products through ordinary policing methods.

The developed area of the East Texas oil field is of enormous extent, comprising approximately 116,000 acres (Oil Weekly, Feb. 26, 1934, (Reistle, East Texas Production), p. 14) underlying a tract which is 35 miles long and from 3 to 7½ miles in breadth (Federal Oil Conservation Board, Report V (1932), p. 42). Present average well spacing is approximately one well to 9.5 acres (Reistle, *supra*), and there are approximately 15,000 wells in the field (Production and Storage Report for the East Texas Field, Railroad Commission of Texas, Sept. 1934, p. 4, Appendix B, p. 179). The field is divided into more than 3,000 separate lease tracts operated by approximately 1,900 different producers. (Production and Storage Report for the East Texas Field, Railroad Commission of Texas, Feb. 1934, p. 7.) Each well in the field has a separate daily allowable production computed on the basis of a uniform percentage of each well's hourly potential producing capacity as fixed by orders of the Railroad Commission of Texas.

The individual wells are connected directly to storage tanks upon the leases where they are located, several wells usually flowing into a single

tank or battery of tanks.[95] In the same lease tanks there is usually a certain quantity of storage oil in addition to the current production. For example, on the first day of October 1934 there was in storage on leases in the East Texas field 1,394,856 barrels of crude petroleum. (Production and Storage Report for the East Texas Field, Railroad Commission of Texas, Sept. 1934, p. 3, Appendix B, p. 178.)

From the individual leases the oil is customarily gathered through what are known as "gathering systems." (See Sen. Doc. No. 61, 70th Cong., 1st Sess. (Federal Trade Commission, Report on Petroleum Industry, Prices, Profits and Competition), pp. 99–100, Appendix B, p. 10.) In the East Texas field there are some 40 independently operated gathering systems (Production and Storage Report for the East Texas Oil Field, Texas Railroad Commission, Feb. 1934, p. 6) in addition to some gathering lines operated purely as plant facilities by the local refiners, and in addition to the gathering systems operated as adjuncts to the major pipe lines which transport petroleum from the field (*id.* p. 2). Immediately upon its entrance into a gathering system, the crude petroleum produced from any lease becomes intermingled with other petroleum gathered by the system from other

[95] See Lilley, The Oil Industry (1925), pp. 197–198; United States Bureau of Mines, Applied Methods and Equipment for Reducing Evaporation Losses of Petroleum and Gasoline (Bulletin 379, 1934) p. 44.

leases; and it is further intermingled with oil from other sources upon delivery into trunk pipe lines for transportation out of the field, or delivery to the storage tanks of local refineries, or of some loading rack operator adjacent to a railroad right-of-way for rail shipment, or upon delivery to some other gathering system. Thus, in the gathering systems there is a continuous concealed movement of oil from place to place and from gathering system to gathering system within the field, which thoroughly confuses the source from which the petroleum was produced and the destination to which it is to be shipped. Storage oil is necessarily intermingled with current production, allowable production with excess production, and oil from each well with oil from hundreds of other wells.

The petroleum leaves the field through three major outlets. Approximately 90% of the crude produced in the field is transported by the trunk pipe lines which carry it to Louisiana, to the Gulf Coast for refining or coastwise movement, and to the Mid-Continent Area (No. 260, R. 116–117). Approximately 10% is refined in the refineries located in the field, and leaves the field in the form of refined products (No. 260, R. 116–117). An almost negligible quantity of crude oil leaves the field through the medium of tank-car shipments over the railroads. See Production and Storage Report for the East Texas Field, Railroad Commission of Texas, for September 1934, Appendix B, p. 181.

An attempt to obtain the information necessary to prevent the interstate movement of illegal petroleum and its products through the medium of inspectors and investigators would be fore-doomed to failure. A body of law-enforcing officers watching the movement of oil and products from Texas through investigation of the three outlets described above could accomplish nothing in view of the fact that petroleum from various sources is commingled and bears no marks showing the source from which it comes or the legality or illegality of its production (No. 135, R. 58, 66–67; No. 260, R. 113). If this force of law officers were expanded so that all gathering systems leading to these three outlets could be constantly watched and their deliveries checked, information might be obtained as to the leases of origin, but no information would be available as to the day or days on which the oil was produced or the particular well or wells from which it came, which information is essential to the determination of the legality or illegality of the production. Therefore, this force of investigators would have to be expanded further in order to place men upon each lease to watch the daily production from the individual wells and to make constant gauges of the lease storage.

Such a system of enforcement would necessitate a force of approximately 25,000 men (No. 135, R. 66; No. 260, R. 119), but even such a body of men would, as a practical matter, find it almost impossi-

ble to check accurately the legality or illegality of the production throughout the field and to trace the oil produced through its ramifications of transportation and refining until it reached the stage of interstate shipment (No. 135, R. 58, 67; No. 260, R. 120). Not only does the complicated nature of the legitimate movement of oil prevent this being done accurately, but also additional difficulties are being constantly interposed by operators of wells, pipe lines, and refineries who seek to conceal their operations. A common practice adopted by producers who are engaged in withdrawing more than their legal allowable is to install secret pipe connections which conduct the oil from the lease in a manner to defeat detection. Devices of this type are known as "by-passes" and have found extensive use in the East Texas field (No. 135, R. 98–101, 125, 126, 128). Lease tanks are frequently allowed to flow into gathering systems at the same time that wells are flowing into the lease tanks, thus defeating any attempt to gauge the petroleum being produced (No. 135, R. 61, 126–127; No. 260, R. 121, 124). Other devices such as reverse valves, which appear to be locked closed when in reality they are open; running crude oil into pits usually used for waste oil whence it is recovered as crude oil (Oil and Gas Journal, Feb. 1, 1934 (Bredberg, Doom of East Texas Hot Oil Producers Sounded by Latest Federal Activity), p. 32) and concealing in inaccessible locations the valves on the main line running

from the wells (National Petroleum News, Mar. 21, 1934 (Smith, The Panorama of Petroleum in the Mid-Continent), p. 31, 32) are utilized. It cannot be expected that inspections of the physical properties can uncover all of these practices.

It is apparent, therefore, that it is impossible to identify and prevent the shipment of illegal petroleum and the products obtained therefrom through a policing system, however thorough. The information necessary to identify and prevent such shipment can, as a practical matter, only be obtained from those actually engaged in producing, shipping, refining or transporting petroleum and its products, and the only known reasonable and effective method of obtaining such information from them is by a system of periodic reports. No evidence was submitted by the complainants in either of these cases that such a reporting system was not reasonable and necessary for the enforcement of Section 9 (c). On the other hand, a large number of experienced oil producers and refiners testified that such a reporting system was both reasonable and necessary (No. 135, R. 58, 61, 62, 63, 65, 66, 67; No. 260, R. 86–88, 103, 119, 120, 122, 123, 124).

(2) *Periodic reports from all producers are necessary for the enforcement of Section 9 (c).*

In order to detect interstate movements of illegally produced petroleum and its products it is necessary first to identify the petroleum as legal or

illegal and then to trace its movement into interstate commerce. The only persons who can report as of their own knowledge as to the legality of their production are the producers themselves, since certain of the facts essential in determining legality of production are known to them alone. Gathering systems, pipe lines and refineries may know the total amounts of oil which they receive from particular leases, but no one except the producers who turn the valves on the lines connecting their wells with the lease tanks on their leases can possibly have knowledge of the day by day production and of the particular wells which actually supply the contents of the lease tanks from which deliveries are made. These facts must be known, since the proration orders of the Railroad Commission of Texas prescribe *daily* allowables and impose the restrictions upon *individual wells.* Moreover, only the producers are able to report whether or not oil from the same lease is being delivered at the same time through more than one connection (No. 135, R. 103). It is apparent, therefore, that an adequate system of reports must include reports from the producers themselves.

Any contention that reports are necessary only from those producers whose oil or its products moves eventually into interstate commerce is manifestly untenable. Producers cannot ordinarily know either the immediate or ultimate destination of the oil which they themselves produce. There is

an intricate, interconnected network of gathering systems and pipe lines in the field into which the oil flows and from which it may be delivered to a large number of different points within and without the field. (No. 135, R. 58, 61, 66–67, 98–101; No. 260, R. 120, 124.) Moreover, the producers ordinarily have no control over the movement of oil after it has been removed from their lease tanks, since in the usual course of business they sell and surrender possession of their oil immediately upon delivery from these tanks. (No. 260, R. 72, 74; See Federal Trade Commission, Report on Petroleum Industry, etc., *supra,* pp. 99–101, Appendix B, p. 10.)

As a matter of fact, 85% of the oil produced in the field moves ultimately into interstate commerce in the form of crude or its products (No. 260, R. 117). Furthermore, every well in the field contributes to this stream of interstate commerce to some degree, because of the fact that all oil gathered by the gathering systems and moving to refineries or trunk pipe lines is, during the process of gathering, refining and transportation, inextricably intermixed (No. 260, R. 79–80, 84; No. 135, R. 103). Approximately 90% of the crude from the field leaves the field in the trunk pipe lines in which it is either being transported into interstate commerce or is commingled with other oil which is being so transported (No. 260, R. 114, 117). Practically all of the balance of crude produced in the field moves to local refineries which transport approximately

60% of the products manufactured by them into interstate commerce (No. 260, R. 117, 110).

(3) *Periodic reports from all refiners are also necessary for the enforcement of Section 9 (c).*

Although a system of periodic reports from all producers supplemented by inspections and investigations will disclose the essential facts concerning production, it is not a sufficient source of information to enable the Government to enforce the prohibition against the interstate shipment of illegal petroleum and the products thereof. As was pointed out above, the producers are not in a position to report the destination to which their oil will move, since its movement is not ordinarily under their control from the moment that it is transferred from the lease tanks to the gathering lines. It is therefore necessary that the producers' reports be supplemented by information concerning the course of transit of oil from the time it leaves the wells until it reaches an interstate carrier.

In the cases now before this Court only reports from producers and refiners are directly involved, but the system of reports in effect at the time these cases were instituted (see No. 135, R. 9–20; No. 260, R. 39–53), as well as at the present time, constitutes a comprehensive method of tracing movements of oil throughout the entire course of its transportation within and from the field. As a part of this system it is essential that all refiners make periodic reports since they alone are in a po-

sition to inform the Government from whom they obtained their petroleum and to whom they delivered the petroleum in its crude form or as products. The need for this information is clear as to those refiners, such as the complainants in the *Panama* case, which ship a portion of their products in interstate commerce (No. 135, R. 2, 67–97, 105–119), for as to them knowledge of their interstate shipments and of the source of their petroleum is absolutely essential in order to determine whether Section 9 (c) has been or is likely to be violated. It is not believed that there are any refineries in the East Texas field which ship all of their products solely within the State. Petitioners offered no evidence of the existence of any such refineries. Even if there were such refineries in the field, it would, nevertheless, be essential to discover from them whether or not they have transferred any of their crude petroleum or petroleum products to other refineries for refining or re-refining, since the refineries in the field are interconnected by an intricate system of pipe lines through which they may exchange both crude petroleum and petroleum products (No. 135, R. 61, 127, 100; No. 260, R. 121, 124). It is essential to know the intrastate destination of crude or products shipped by refineries located in the field, so that in case of subsequent interstate shipments of such crude or products a record of the source of origin of such shipments will exist. In order to trace the line of movement from the well to the interstate carrier, it is thus essential

to have reports on receipts and deliveries from every refinery in the field.

Reports from the refineries in the East Texas field are particularly necessary since they constitute the principal outlet for illegal petroleum from the field (No. 135, R. 67, 104, 129). Many of them exist merely for the purpose of disposing of crude oil (No. 135, R. 104). Nearly all own pipe line and gathering systems (No. 135, R. 61, 126; No. 260, R. 121, 124), and many also own wells (No. 135, R. 61; No. 260, R. 124, 127). Oil flows from leases in the field to these refineries through an intricate network of pipe lines (No. 135, R. 61, 98–101, 127; No. 260, R. 121, 124). The small pipe lines which run to the refineries are so interconnected that oil can be delivered from practically any point in the field to these refineries and from one refinery to another (No. 135, R. 61, 127; No. 260, R. 121, 124). The evidence established the existence of a large number of "by-passes" or illegal connections from wells to refineries, including the Panama Refining Company, petitioner in No. 135, and several of the complainant refiners in the causes which were consolidated with the *Panama* case (No. 135, R. 98–101, 124–125). Many of the refineries do not use seals on the lock-stops on the tank batteries located on the leases from which they receive oil, with the result that the lock-stops can be opened at will so as to permit oil to flow from the lease to the refineries

at the same time that it is flowing into the lease tanks, thus defeating any attempt to ascertain the amount of oil flowing from wells on these leases (No. 135, R. 61, 126–127; No. 260, R. 121, 124).

Periodic reports from producers and refiners and also from pipe lines and gathering systems not only disclose the source and course of transit followed by petroleum within and from the field but also serve to provide a cross-check of the truth and accuracy of all of the reports. Whereas any single person might be able to deceive inspectors and to falsify his records and reports, if his operations were examined separately, it is more difficult for him to avoid detection when all of the persons from whom he is receiving and to whom he is delivering petroleum or petroleum products are also required to report. A thorough system of sworn reports properly audited requires collusion between all persons handling the oil from the time of production until it eventually leaves the field, in order successfully to conceal illegal operations.

(4) *Inspection of books and records to supplement the reporting system is essential to the enforcement of Section 9 (c).*

In order to check the accuracy of the reports of producers, refiners and others it is essential that they be required to keep records of their transactions available for inspection as provided in Regulation VII. While the books and records may also be kept inaccurately, it is much more difficult, as a

practical matter, to eliminate from books and records all evidence disclosing the actual operations of a business. Thus inspection of books and records will often disclose the amount of payments made or received by individuals selling or purchasing crude oil or its products and will thereby furnish some check as to the accuracy of the quantity of crude or its products shown in the reports to have been delivered or received. Books and records will often disclose the real parties in interest from whom crude or its products has been purchased or to whom it has been sold. Such facts may easily be concealed in the reports by the use of fictitious names.

What has previously been stated as to the utility of a complete reporting system in furnishing a cross-check as to the accuracy of all reports is equally applicable to the requirement of the maintenance of books available for inspection. Such a requirement furnishes a check not only of the reports made by any particular person reporting, but also of the reports made of other persons with whom he has dealt.

In view of the ingenuity with which producers, refiners and others in the East Texas Field have sought to conceal illegal operations, a cross-check provided by a thorough reporting system supplemented by inspection of books and records cannot be said to be a needless precaution. Such a system not only serves to detect actual violations of Section 9 (c), but also to deter future violations. See

Bartlett Frazier Co. v. *Hyde,* 65 F. (2d) 350, 352 (C. C. A. 7th), certiorari denied, 290 U. S. 654. A person will be loath to violate the law when he is faced with the alternative either of disclosing his violation or of making a false statement under oath, the falsity of which may be detected.

As previously stated (*supra,* p. 177) no evidence was presented by the complainants in either case showing that the regulations were not necessary to the enforcement of Section 9 (c). The evidence offered by complainants bearing on the regulations consisted of testimony that agents of the Division of Investigations of the Department of the Interior had gauged the storage tanks on their leases (No. 135, R. 40–41, 42–43, 46, 48, 49, 51, 53; No. 260, R. 69, 72–73). There was also testimony by one of the complainants in the *Panama* case that on one occasion agents of the Division of Investigations had dug up and disconnected the flow line leading from one of his wells on the claim that it constituted a "by-pass" (No. 135, R. 40). Although the regulations did not authorize these acts,[96] we think it clear, as the court below stated, that even if such conduct constituted a trespass "there is no showing of irreparable damage or insolvency of the trespassers, and no occasion for an injunction on that account" (No. 135, R. 190; No. 260, R. 192).

[96] The regulations recently promulgated provide for the inspection and examination of wells, pipes, flow lines, etc., and the gauging of tanks. See Appendix A, p. 224.

B. The regulations are neither unreasonable nor burdensome; they involve no infringement of the rights guaranteed to petitioners by the due process clause of the Fifth Amendment

We think it clear that what has been stated as to the necessity of reports and inspection also demonstrates that the regulations are reasonably adapted to attain the ends sought to be achieved by Section 9(c) of the Act and that they are not arbitrary or capricious. See *Bartlett Frazier Co.* v. *Hyde, supra,* p. 352.

No evidence was offered by petitioners that the regulations imposed any hardship or inconvenience. On behalf of the respondents a large number of persons engaged in the producing and refining branches of the industry, and who were themselves subject to these very regulations, testified that the reports imposed no burden or inconvenience upon them (No. 135, R. 58, 62–63, 64, 65, 66; No. 260, R. 120, 122, 123, 125, 126). They require but a nominal amount of time for preparation (No. 135, R. 62, 65). They demand information which must be known to those reporting in the successful operation of their business (No. 135, R. 62, 130; No. 260, R. 118–19, 123, 125, 126) and in making State and Federal tax reports (No. 135, R. 130; No. 260, R. 118). The reports required from producers [97] are identical with those which they must file with the

[97] At the present time refiners are also required to file reports with the Railroad Commission of Texas giving substantially the information required under the Federal regulations.

Railroad Commission of Texas (No. 135, R. 130; No. 260, R. 118, 123).

C. The regulations do not exeed the power of Congress under the commerce clause even though they apply to persons not engaged in interstate commerce

The power to regulate interstate commerce necessarily carries with it the power to make the control effective. Thus, if the regulations are necessary to the enforcement of Section 9 (c), a valid commerce statute, it follows that they are within the Federal commerce power.

Reports have been recognized as legitimate devices for aiding in the enforcement of other commerce laws. *Baltimore & Ohio Railroad* v. *Interstate Commerce Commission,* 221 U. S. 612; *Interstate Commerce Commission* v. *Goodrich Transit Company,* 224 U. S. 194; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 42; *Bartlett Frazier Co.* v. *Hyde, supra.*

As has previously been pointed out, reports from all producers and refiners are essential to the enforcement of Section 9 (c) (*supra,* pp. 177–183). Under these circumstances, reports from intrastate operators may be required as "necessary and proper for carrying into effect" the regulation of interstate commerce.[98] In the *Goodrich* case, *supra,* arising under the Interstate Commerce Act,

[98] The general principles applicable to the control of intrastate activities under the commerce clause have been set forth above (pp. 44–47, 108–128, *supra*).

and in the *Olsen* and *Bartlett Frazier Co.* cases, *supra,* under the Grain Futures Act, it has been held that reports of intrastate activities could be required where necessary to make the regulation of interstate commerce effective. In the *Goodrich* case the defendant was required to file reports as to an amusement park, as well as for its interstate business.

D. The regulations do not violate the constitutional prohibitions against unreasonable searches and seizures and compulsory self-incrimination

The prohibition against unreasonable searches and seizures in the Fourth Amendment and the privilege against self-incrimination embodied in the Fifth Amendment may conveniently be considered together. As this Court said in the famous *Boyd* case (116 U. S. 616, 630, 633), the two Amendments "run almost into each other" and "throw great light on each other."

The language of the Amendments demonstrates that they were not intended to prohibit regulations of the character here in question.

FOURTH AMENDMENT

> their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

FIFTH AMENDMENT

> No person * * * shall be compelled in any criminal case to be a witness against himself * * *.

It would seem clear from the wording of the Fifth Amendment that it applies only to a witness in a judicial or quasi judicial proceeding or investigation, not to such matters as the filing of reports or the keeping of records for inspection for regulatory purposes. *Consolidated Rendering Co.* v. *Vermont,* 207 U. S. 541; *Hale* v. *Henkel,* 201 U. S. 43, 67; *Burdeau* v. *McDowell,* 256 U. S. 465, 475; *Counselman* v. *Hitchcock,* 142 U. S. 547; *Matter of Harris,* 221 U. S. 274.[99] The Amendment merely incorporates into our constitutional structure a rule of evidence.

---

[99] *Counselman* v. *Hitchcock,* 142 U. S. 547, 562: "The object [of the Amendment] was to insure that a person should not be compelled, *when acting as a witness in any investigation,* to give testimony which might tend to show that he himself had committed a crime." *Hale* v. *Henkel,* 201 U. S. 43, 67: "The interdiction of the Fifth Amendment operates only where a witness is asked to incriminate himself—in other words, *to give testimony* which may possibly expose him to a criminal charge." *Burdeau* v. *McDowell,* 256 U. S. 465, 475: "The Fifth Amendment, *as its terms import,* is intended to secure the citizen from compulsory *testimony* against himself. It protects from extorted confessions, or examinations *in court proceedings* by compulsory methods." (Italics supplied.)

The privilege in any event cannot apply to the corporate petitioners. *Hale* v. *Henkel,* 201 U. S. 43; *Hammond Packing Co.* v. *Arkansas,* 212 U. S. 322; *Wilson* v. *United States,* 221 U. S. 361; *Essgee Co.* v. *United States,* 262 U. S. 151.

The Fourth Amendment denounces "unreasonable searches and seizures." *Carroll* v. *United States,* 267 U. S. 132, 147. The compulsory filing of reports is obviously neither a "search" nor a "seizure." Nor can the inspection of records be regarded as a "seizure." The inspection might be deemed a "search"—but examination of specific business records required by law to be kept would clearly not be an "unreasonable" search within the accepted meaning of the word. See *Olmstead* v. *United States,* 277 U. S. 438, 464; *Carroll* v. *United States, supra,* p. 147.

In the *Olmstead* case the Court described the scope of the Fourth Amendment as follows (p. 466):

> Neither the cases we have cited nor any of the many federal decisions brought to our attention hold the Fourth Amendment to have been violated as against a defendant unless there has been an official search and seizure of his person, or such a seizure of his papers or his tangible material effects, or an actual physical invasion of his house "or curtilage" for the purpose of making a seizure.

The history of the Amendments indicates that their purpose was the prevention of unreasonably violent enforcement of the criminal law. See *Weeks* v. *United States,* 232 U. S. 383, 390, and *Twining* v. *New Jersey,* 211 U. S. 78, 102. In no case has it been held that [redacted] they limited the

power of Congress to require reports and the keeping of business records open to inspection as an incident to the enforcement of a valid regulatory statute.[100] Such provisions have uniformly been sustained by this Court, and with a minimum of discussion. See *Flint* v. *Stone Tracy Co.*, 220 U. S. 107; *Baltimore & Ohio R. R. Co.* v. *Interstate Commerce Commission*, 221 U. S. 612; *Interstate Commerce Commission* v. *Goodrich Transit Co.*, 224 U. S. 194; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *United States* v. *Katz*, 271 U. S. 354. See also *Bartlett Frazier Co.* v. *Hyde*, 65 F. (2d) 350 (C. C. A. 7th), certiorari denied, 290 U. S. 654.

Petitioners' contention that the provision for the filing of reports and inspection of books vio-

---

[100] None of the cases in which the Amendments have been held to be violated involved this kind of statute. See *Boyd* v. *United States*, 116 U. S. 616; *Counselman* v. *Hitchcock*, 142 U. S. 547; *Weeks* v. *United States*, 232 U. S. 383; *Harriman* v. *Interstate Commerce Commission*, 211 U. S. 407; *Ellis* v. *Interstate Commerce Commission*, 237 U. S. 434; *Federal Trade Commission* v. *American Tobacco Company*, 264 U. S. 298. In the *Boyd* case, *supra*, the Court said (pp. 623–624):

> So, also, the supervision authorized to be exercised by officers of the revenue over the manufacture or custody of excisable articles, and the entries thereof in books required by law to be kept for their inspection, are necessarily excepted out of the category of unreasonable searches and seizures.

These cases applied the Amendments to the use of evidentiary material in judicial and quasi judicial proceedings. In the *Harriman* and *American Tobacco Co.* cases, it was the unlimited scope of the demands for information which raised a question as to their validity.

lates the Fifth Amendment, because the reports and inspections may furnish evidence that the person subject to these requirements has violated Section 9 (c) of the Act is disposed of by these decisions. In all of them the disclosure of information would likewise have operated to reveal violations of law by the persons from whom information was compelled.

Provisions similar to those of Regulation VII, that books must be kept subject to governmental inspection, were upheld in *Chicago Board of Trade* v. *Olsen, supra,* and *United States* v. *Katz, supra.* In *Bartlett Frazier Co.* v. *Hyde, supra,* which involved the validity of the provision for reports and inspections under the Grain Futures Act, the Circuit Court of Appeals stated (p. 351):

> Appellants invoke the Fourth Amendment as a shield against the requirement that they subject their books and records to the inspection of the Department, and the making of the reports. The Amendment, * * * cannot be applied to regulations which require reports and disclosures in respect to a business which is affected with a public interest, so far as such disclosures may be reasonably necessary for the due protection of the public. Were it otherwise, railroads and public utilities generally could not be required to make reports or to subject their records to inspection by agents of the government. Indeed, where public interest requires it, the right of visitation and

> disclosure has been extended even to business not charged with a public interest, as witness the taxing power, where the requirement of income reports and the right to inspect private books and papers have been definitely upheld.

The reports required from producers and refiners have other uses than the disclosure of violations of law by the persons reporting. As has previously been pointed out, reports from all producers and refiners are integral parts of a comprehensive reporting system which is essential in order that oil moving in interstate commerce may be traced to its source and the legality of its transportation determined. The reports of those complying with the law aid in detecting violations by others without, of course, in any way incriminating the former. It would hardly be feasible to require reports only from those who obey the law. Manifestly the reports and inspections provided for under the regulations here in question are not merely preliminary steps in the preparation of court action against the persons subject to them.

The validity of the regulations is supported not only by the decisions of this Court but by every sound consideration of policy. The need for reports and the inspection of records is much greater in the enforcement of a statute regulating business than in the enforcement of the traditional criminal law. And the burden on the citizen is neither heavy nor novel. "Pawnbrokers, express companies, liq-

uor vendors, and many other kinds of businesses have long since been subject to just that sort of public scrutiny." *Karr* v. *Baldwin*, 57 F. (2d) 252, 255. The internal revenue regulations contain many similar provisions. The citizen unquestionably is entitled to a decent privacy in his personal affairs, but when he engages in business activities which may harm others, he may not properly insist upon concealing such activities from the Government.

CONCLUSION

It is submitted that:

1. The production-control provisions of the Petroleum Code are within the commerce power of Congress and do not violate the due process clause of the Fifth Amendment; that the authorization of the President in the Recovery Act to approve codes of fair competition is not an unconstitutional delegation of legislative power; and that the production-control provisions of the Petroleum Code are authorized by the Recovery Act.

2. Section 9 (c) of the Recovery Act is within the commerce power of Congress and does not invalidly delegate legislative power to the President.

3. The Regulations are authorized by the Recovery Act, are within the Federal commerce power, and do not violate the due process clause of the Fifth Amendment nor the constitutional guarantees against unreasonable searches and seizures and compulsory self-incrimination.

It is respectfully submitted, therefore, that the judgments below should be affirmed.

J. CRAWFORD BIGGS,
Solicitor General.
HAROLD M. STEPHENS,
Assistant Attorney General.
CARL MCFARLAND,
M. S. HUBERMAN,
CHARLES H. WESTON,
A. H. FELLER,
Special Assistants to the Attorney General.
ROBERT L. STERN,
Special Attorney.

NATHAN R. MARGOLD,
Solicitor,
Department of the Interior,
CHARLES FAHY,
First Assistant Solicitor,
Department of the Interior,
JOHN F. DAVIS,
Attorney,
Petroleum Administrative Board,
Of Counsel.

DECEMBER 1934.

98810A—34——14

APPENDIX A

1. Title I of the National Industrial Recovery Act, approved June 16, 1933, c. 90, 48 Stat. 195 (U. S .C. Sup. VII, Title 15, Secs. 701–710), reads as follows:

AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—INDUSTRIAL RECOVERY

DECLARATION OF POLICY

SECTION 1. A national emergency productive of wide-spread unemployment and disorganization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people, is hereby declared to exist. It is hereby declared to be the policy of Congress to remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair

competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and to conserve natural resources.

ADMINISTRATIVE AGENCIES

SEC. 2. (a) To effectuate the policy of this title, the President is hereby authorized to establish such agencies, to accept and utilize such voluntary and uncompensated services, to appoint, without regard to the provisions of the civil service laws, such officers and employees, and to utilize such Federal officers and employees, and, with the consent of the State, such State and local officers and employees, as he may find necessary, to prescribe their authorities, duties, responsibilities, and tenure, and, without regard to the Classification Act of 1923, as amended, to fix the compensation of any officers and employees so appointed.

(b) The President may delegate any of his functions and powers under this title to such officers, agents, and employees as he may designate or appoint, and may establish an industrial planning and research agency to aid in carrying out his functions under this title.

(c) This title shall cease to be in effect and any agencies established hereunder shall cease to exist at the expiration of two years after the date of enactment of this Act, or sooner if the President shall by proclama-

tion or the Congress shall by joint resolution declare that the emergency recognized by section 1 has ended.

CODES OF FAIR COMPETITION

SEC. 3. (a) Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry or subdivision thereof, represented by the applicant or applicants, if the President finds (1) that such associations or groups impose no inequitable restrictions on admission to membership therein and are truly representative of such trades or industries or subdivisions thereof, and (2) that such code or codes are not designed to promote monopolies or to eliminate or oppress small enterprises and will not operate to discriminate against them, and will tend to effectuate the policy of this title: *Provided,* That such code or codes shall not permit monopolies or monopolistic practices: *Provided further,* That where such code or codes affect the services and welfare of persons engaged in other steps of the economic process, nothing in this section shall deprive such persons of the right to be heard prior to approval by the President of such code or codes. The President may, as a condition of his approval of any such code, impose such conditions (including requirements for the making of reports and the keeping of accounts) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such code, as the President in his discretion

deems necessary to effectuate the policy herein declared.

(b) After the President shall have approved any such code, the provisions of such code shall be the standards of fair competition for such trade or industry or subdivision thereof. Any violation of such standards in any transaction in or affecting interstate or foreign commerce shall be deemed an unfair method of competition in commerce within the meaning of the Federal Trade Commission Act, as amended; but nothing in this title shall be construed to impair the powers of the Federal Trade Commission under such Act, as amended.

(c) The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of any code of fair competition approved under this title; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations.

(d) Upon his own motion, or if complaint is made to the President that abuses inimical to the public interest and contrary to the policy herein declared are prevalent in any trade or industry or subdivision thereof, and if no code of fair competition therefor has theretofore been approved by the President, the President, after such public notice and hearing as he shall specify, may prescribe and approve a code of fair competition for such trade or industry or subdivision thereof, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of this section.

(e) On his own motion, or if any labor organization, or any trade or industrial organization, association, or group, which has complied with the provisions of this title, shall make complaint to the President that any article or articles are being imported into the United States in substantial quantities or increasing ratio to domestic production of any competitive article or articles and on such terms or under such conditions as to render ineffective or seriously to endanger the maintenance of any code or agreement under this title, the President may cause an immediate investigation to be made by the United States Tariff Commission, which shall give precedence to investigations under this subsection, and if, after such investigation and such public notice and hearing as he shall specify, the President shall find the existence of such facts, he shall, in order to effectuate the policy of this title, direct that the article or articles concerned shall be permitted entry into the United States only upon such terms and conditions and subject to the payment of such fees and to such limitations in the total quantity which may be imported (in the course of any specified period or periods) as he shall find it necessary to prescribe in order that the entry thereof shall not render or tend to render ineffective any code or agreement made under this title. In order to enforce any limitations imposed on the total quantity of imports, in any specified period or periods, of any article or articles under this subsection, the President may forbid the importation of such article or articles unless the importer shall have first obtained from the Secretary of the Treasury a license pursuant to such regulations as the President may prescribe.

Upon information of any action by the President under this subsection the Secretary of the Treasury shall, through the proper officers, permit entry of the article or articles specified only upon such terms and conditions and subject to such fees, to such limitations in the quantity which may be imported, and to such requirements of license, as the President shall have directed. The decision of the President as to facts shall be conclusive. Any condition or limitation of entry under this subsection shall continue in effect until the President shall find and inform the Secretary of the Treasury that the conditions which led to the imposition of such condition or limitation upon entry no longer exists.

(f) When a code of fair competition has been approved or prescribed by the President under this title, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense.

AGREEMENTS AND LICENSES

SEC. 4. (a) The President is authorized to enter into agreements with, and to approve voluntary agreements between and among, persons engaged in a trade or industry, labor organizations, and trade or industrial organizations, associations, or groups, relating to any trade or industry, if in his judgment such agreements will aid in effectuating the policy of this title with respect to transactions in or affecting interstate or foreign commerce, and will be con-

sistent with the requirements of clause (2) of subsection (a) of section 3 for a code of fair competition.

(b) Whenever the President shall find that destructive wage or price cutting or other activities contrary to the policy of this title are being practiced in any trade or industry or any subdivision thereof, and, after such public notice and hearing as he shall specify, shall find it essential to license business enterprises in order to make effective a code of fair competition or an agreement under this title or otherwise to effectuate the policy of this title, and shall publicly so announce, no person shall, after a date fixed in such announcement, engage in or carry on any business, in or affecting interstate or foreign commerce, specified in such announcement, unless he shall have first obtained a license issued pursuant to such regulations as the President shall prescribe. The President may suspend or revoke any such license, after due notice and opportunity for hearing, for violations of the terms or conditions thereof. Any order of the President suspending or revoking any such license shall be final if in accordance with law. Any person who, without such a license or in violation of any condition thereof, carries on any such business for which a license is so required, shall, upon conviction thereof, be fined not more than $500, or imprisoned not more than six months, or both, and each day such violation continues shall be deemed a separate offense. Notwithstanding the provisions of section 2 (c), this subsection shall cease to be in effect at the expiration of one year after the date of enactment of this Act or sooner if the President shall by proclamation or the Con-

gress shall by joint resolution declare that the emergency recognized by section 1 has ended.

SEC. 5. While this title is in effect (or in the case of a license, while section 4 (a) is in effect) and for sixty days thereafter, any code, agreement, or license approved, prescribed, or issued and in effect under this title, and any action complying with the provisions thereof taken during such period, shall be exempt from the provisions of the antitrust laws of the United States.

Nothing in this Act, and no regulation thereunder, shall prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof; nor shall anything in this Act, or regulation thereunder, prevent anyone from marketing or trading the produce of his farm.

LIMITATIONS UPON APPLICATION OF TITLE

SEC. 6. (a) No trade or industrial association or group shall be eligible to receive the benefit of the provisions of this title until it files with the President a statement containing such information relating to the activities of the association or group as the President shall by regulation prescribe.

(b) The President is authorized to prescribe rules and regulations designed to insure that any organization availing itself of the benefits of this title shall be truly representative of the trade or industry or subdivision thereof represented by such organization. Any organization violating any such rule or regulation shall cease to be entitled to the benefits of this title.

(c) Upon the request of the President, the Federal Trade Commission shall make such investigations as may be necessary to

enable the President to carry out the provisions of this title, and for such purposes the Commission shall have all the powers vested in it with respect of investigations under the Federal Trade Commission Act, as amended.

SEC. 7. (a) Every code of fair competition, agreement, and license approved, prescribed, or issued under this title shall contain the following conditions: (1) That employees shall have the right to organize and bargain collectively through representatives of their own choosing, and shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; (2) that no employee and no one seeking employment shall be required as a condition of employment to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing; and (3) that employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

(b) The President shall, so far as practicable, afford every opportunity to employers and employees in any trade or industry or subdivision thereof with respect to which the conditions referred to in clauses (1) and (2) of subsection (a) prevail, to establish by mutual agreement, the standards as to the maximum hours of labor, minimum rates of pay, and such other conditions of employment as may be necessary in such trade or industry or subdivision thereof to effectuate the policy of this title; and the standards established in such agreements, when approved by the President, shall have the same

effect as a code of fair competition, approved by the President under subsection (a) of section 3.

(c) Where no such mutual agreement has been approved by the President he may investigate the labor practices, policies, wages, hours of labor, and conditions of employment in such trade or industry or subdivision thereof; and upon the basis of such investigations, and after such hearings as the President finds advisable, he is authorized to prescribe a limited code of fair competition fixing such maximum hours of labor, minimum rates of pay, and other conditions of employment in the trade or industry or subdivision thereof investigated as he finds to be necessary to effectuate the policy of this title, which shall have the same effect as a code of fair competition approved by the President under subsection (a) of section 3. The President may differentiate according to experience and skill of the employees affected and according to the locality of employment; but no attempt shall be made to introduce any classification according to the nature of the work involved which might tend to set a maximum as well as a minimum wage.

(d) As used in this title, the term "person" includes any individual, partnership, association, trust, or corporation; and the terms "interstate and foreign commerce" and "interstate or foreign commerce" include, except where otherwise indicated, trade or commerce among the several States and with foreign nations, or between the District of Columbia or any Territory of the United States and any State, Territory, or foreign nation, or between any insular possessions or other places under the jurisdiction of the United States, or between any

such possession or place and any State or Territory of the United States or the District of Columbia or any foreign nation, or within the District of Columbia or any Territory or any insular possession or other place under the jurisdiction of the United States.

APPLICATION OF AGRICULTURAL ADJUSTMENT ACT

SEC. 8. (a) This title shall not be construed to repeal or modify any of the provisions of title I of the Act entitled "An Act to relieve the existing national economic emergency by increasing agricultural purchasing power, to raise revenue for extraordinary expenses incurred by reason of such emergency, to provide emergency relief with respect to agricultural indebtedness, to provide for the orderly liquidation of joint-stock land banks, and for other purposes", approved May 12, 1933; and such title I of said Act approved May 12, 1933, may for all purposes be hereafter referred to as the "Agricultural Adjustment Act."

(b) The President may, in his discretion, in order to avoid conflicts in the administration of the Agricultural Adjustment Act and this title, delegate any of his functions and powers under this title with respect to trades, industries, or subdivisions thereof which are engaged in the handling of any agricultural commodity or product thereof, or of any competing commodity or product thereof, to the Secretary of Agriculture.

OIL REGULATION

SEC. 9. (a) The President is further authorized to initiate before the Interstate

Commerce Commission proceedings necessary to prescribe regulations to control the operations of oil pipe lines and to fix reasonable, compensatory rates for the transportation of petroleum and its products by pipe lines, and the Interstate Commerce Commission shall grant preference to the hearings and determination of such cases.

(b) The President is authorized to institute proceedings to divorce from any holding company any pipe-line company controlled by such holding company which pipeline company by unfair practices or by exorbitant rates in the transportation of petroleum or its products tends to create a monopoly.

(c) The President is authorized to prohibit the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State. Any violation of any order of the President issued under the provisions of this subsection shall be punishable by fine of not to exceed $1,000, or imprisonment for not to exceed six months, or both.

RULES AND REGULATIONS

SEC. 10. (a) The President is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this title, and fees for licenses and for filing codes of fair competition and agreements, and any violation of any such rule or regulation shall be punishable by fine of

not to exceed $500, or imprisonment for not to exceed six months, or both.

(b) The President may from time to time cancel or modify any order, approval, license, rule, or regulation issued under this title; and each agreement, code of fair competition, or license approved, prescribed, or issued under this title shall contain an express provision to that effect.

Title III, Section 303, of the National Industrial Recovery Act (U. S. C. Sup. VII, Title 15, Sec. 711), reads as follows:

SEPARABILITY CLAUSE

SEC. 303. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

2. Executive Orders relating to the Petroleum Code.

A. Executive Order approving Code.

EXECUTIVE ORDER

CODE OF FAIR COMPETITION FOR THE PETROLEUM INDUSTRY

An application having been duly made, pursuant to and in full compliance with the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a Code of Fair Competition for the Petroleum Industry, and hearings having been held thereon and the Administrator having rendered his report together with his recommendations and findings with respect thereto, and the Adminis-

trator having found that the said Code of Fair Competition complies in all respects with the pertinent provisions of Title I of said Act and that the requirements of clauses (1) and (2) of subsection (a) of Section 3 of the said Act have been met:

NOW, THEREFORE, I, Franklin D. Roosevelt, President of the United States, pursuant to the authority vested in me by Title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do adopt and approve the report, recommendations, and findings of the Administrator and do order that the said Code of Fair Competition be and it is hereby approved.

FRANKLIN D. ROOSEVELT.

Approval Recommended:

HUGH S. JOHNSON,
Administrator.

THE WHITE HOUSE, *August 19, 1933.*

B. Executive Order designating the Secretary of the Interior as Administrator of the Petroleum Code and the Department of the Interior as the Federal Agency.

EXECUTIVE ORDER

ADMINISTRATION OF THE PETROLEUM INDUSTRY

Pursuant to the authority vested in me by Section 2 (b) of Title I of the Act of June 16, 1933, known as the "National Industrial Recovery Act" (Public No. 67, 73d Congress), and in accordance with Section 2 of Article I and Section 1 (b) of Article VII of the Code of Fair Competition adopted by the petroleum industry and approved by me August 19, 1933, I hereby designate and ap-

point, for the petroleum industry, the Secretary of the Interior to be Administrator and the Department of the Interior to be the Federal Agency, as provided by the aforesaid Act and Code of Fair Competition, to exercise on my behalf and in my stead all the functions and powers vested in me, or in any Federal Agency, by such Act and such Code of Fair Competition.

FRANKLIN D. ROOSEVELT.

The WHITE HOUSE,
Aug. 28, 1933.

3. Pertinent provisions of the Petroleum Code (as amended September 13, 1933, and September 25, 1934).

PREAMBLE

To meet the emergency in the petroleum industry; to increase employment, establish fair and adequate wages, enlarge the purchasing power of persons related to this industry and improve standards of labor; to conserve the Nation's petroleum resources and to prevent physical and economic wastes which demoralize the national market to the detriment of consumers and producers and to restrain and avoid recurring abuses in the production, transportation and marketing of petroleum and its products which directly obstruct the free flow of interstate and foreign commerce by causing abnormal and disturbing temporary fluctuations in the supply of petroleum or its products that are not responsive to actual demand and prices and disrupt the normal flow of interstate commerce in petroleum and its products; and to prevent the growth of monopoly resulting from unfair competitive practices; and to protect the Nation from an unnecessarily wasteful depletion of this natural re-

source essential for the national defense and safety and the continued functioning of the Nation's transportation facilities that are dependent for operation on an adequate and economic supply of petroleum and its products and to accomplish and effectuate the policies set forth in the National Industrial Recovery Act, this code of fair competition governing the petroleum industry is adopted.

ARTICLE III. PRODUCTION

SECTION 1. The President is hereby requested, after such investigation and hearing as is prescribed by, and subject to the limitations contained in, Title 1 of the National Industrial Recovery Act, to limit imports of crude petroleum and petroleum products for domestic consumption to volumes bearing such ratio to the estimated volume of domestic production as will effectuate the purposes of this Code and the National Industrial Recovery Act.

SECTION 2. Withdrawals of crude oil from storage shall be subject to approval by the Planning and Coordination Committee but for the remainder of 1933 shall be limited in the aggregate to an average not in excess of 100,000 barrels daily. Additions to storage beyond the necessary limits of fluctuations in working stocks shall be made only with the approval of the Planning and Coordinating Committee.

SECTION 3. Required production of crude oil to balance consumer demand for petroleum products shall be estimated at intervals by a Federal Agency designated by the President. In estimating such required production, due account shall be taken of probable withdrawals from storage and of anticipated

imports. The required production shall be equitably allocated among the several States by the Federal Agency. The estimates of required production and the allocations among the States shall be submitted to the President for approval, and, when approved by him, shall be deemed to be the net reasonable market demand, and may be so certified by the Federal Agency. The allocations when approved by the President shall be recommended as the operating schedule for the producing States and for the industry and thereupon Section 4 of this Article shall apply. In any States where oil is produced on account of back allowables, total current allowables shall be reduced accordingly.

SECTION 4. The subdivision into pool and/or lease and/or well quotas of the production allocated to each State is to be made within the State. Should quotas allocated in conformity with the provisions of this Section and/or Section 3 or ARTICLE III of this Code not be made within the State or if the production of petroleum within any State exceeds the quota allocated to said State, the President may regulate the shipment of petroleum or petroleum products in or affecting interstate commerce out of said State to the extent necessary to effectuate the purposes of the National Industrial Recovery Act and/or he may compile such quotas and recommend them to the State Regulatory Body in such State, in which event it is hereby agreed that such quotas shall become operating schedules for that State.

If any subdivision into quotas of production allocated to any State shall be made within a State any production by any person, as person is defined in Article I, Section 2 of this Code, in excess of any such quota assigned to him, shall be deemed an unfair trade practice and in violation of this Code.

SECTION 5. In any State in which no regulatory body or officer charged with the duty of allocating quotas within said State exists, and under the laws of which any person in any trade or industry within said State is required to comply with the terms of any Code of Fair Competition for such trade or industry approved under Title I of the National Industrial Recovery Act, the President may designate an agency within such State to compile quotas within said State. Such compilations, upon approval by the President, shall become operating schedules for the petroleum industry within said State. If any subdivision into quotas of production allocated to any such State shall be made within the State, any production by any person, as person is defined in Article I, Section 3 of this code in excess of any such quota assigned to him shall be deemed an unfair trade practice and in violation of this code; and, further, persons engaged in the petroleum industry or any branch thereof in any State may adopt a supplemental code, for that State to be effective when approved by the President, covering any matter relating to the petroleum industry not in conflict with the provisions of this code.

4. Allocations of Crude Oil Production among the Producing States.

A. Allocation for September, 1933.

ORDER UNDER CODE OF FAIR COMPETITION FOR THE PETROLEUM INDUSTRY AS APPROVED BY THE PRESIDENT AUGUST 19 1933

Pursuant to the provisions of Sections 3 and 4 of Article III of the Code of Fair Competition for the Petroleum Industry approved by the President, August 19, 1933,

under the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, the current estimate of required daily production of crude oil to balance consumer demand for petroleum products has been found by the Department of the Interior to be 2,409,700 barrels and the allocations among the several petroleum producing States are hereby certified to be as follows:

Arkansas	29,000
California	480,000
Kansas	111,000
Louisiana	70,000
Texas	975,200
Oklahoma	540,000
New Mexico	41,400
Rocky Mountain States	38,900
Appalachian States	94,200
Michigan	30,000
Total	2,409,700

The foregoing allocations shall be effective under the aforesaid Code of Fair Competition as of 7 a. m., September 8, 1933.

It is hereby ordered that in accordance with Section 2 of Article III of the aforesaid code, until further notice there shall be no net withdrawals from storage without the approval of the Planning and Coordination Committee and upon order of the Administrator.

It is hereby further ordered that in accordance with Section 1 of Article III of the aforesaid Code, until further notice, imports of crude petroleum and petroleum products shall be limited to an amount not exceeding the average daily imports of petroleum and petroleum products during the last six months of 1932.

DEPARTMENT OF THE INTERIOR,
By HAROLD L. ICKES,
Secretary of the Interior.

SEPTEMBER 2, 1933.

B. Allocation for October 1933.

ORDER UNDER CODE OF FAIR COMPETITION FOR THE PETROLEUM INDUSTRY AS APPROVED BY THE PRESIDENT

Pursuant to the provisions of Sections 3 and 4 of Article III of the Code of Fair Competition for the Petroleum Industry approved by the President, August 19, 1933, under the provisions of Title I of the National Industrial Recovery Act, approved June 16, 1933, and on the recommendation of the Petroleum Administrative Board and the facts submitted in support thereof, the current estimate of required daily production of crude oil to balance consumer demand for petroleum products has been found by the Department of the Interior to be 2,338,500 barrels, and the allocations among the several petroleum-producing States are hereby certified to be as follows:

Arkansas	33,000
California	455,000
Kansas	116,000
Louisiana	70,000
Texas	965,000
Oklahoma	495,000
New Mexico	41,400
Rocky Mountain States	38,900
Appalachian States	94,200
Michigan	30,000
Total	2,338,500

The foregoing allocations shall be effective under the aforesaid Code of Fair Competition as of 7 a. m., October 1, 1933.

It is hereby further ordered that in accordance with Section 2 of Article II of the aforesaid Code, until further notice, the following States may allocate part of their allowable to withdrawals from crude oil storage not to exceed the following amounts:

	Bbl. per day
Oklahoma	25,000
Texas	40,000
California	15,000
Kansas	10,000
Louisiana	5,000

Such withdrawals from storage shall be assigned by the appropriate State regulatory body to such persons as have received permission from the Planning and Coordination Committee and the approval of the Petroleum Administrator to make the withdrawals.

It is hereby further ordered in accordance with Sections 3 and 4 of Article II of the aforesaid Code that excess production or withdrawals in any State during September shall be charged against the allowable of that State for October and the same policy rigorously adhered to during subsequent months.

It is hereby further ordered that in accordance with Section 1 of Article III of the aforesaid Code, until further notice, imports of crude petroleum and petroleum products shall be limited to an amount not exceeding the average daily imports of petroleum and petroleum products during the last six months of 1932.

HAROLD L. ICKES,
Petroleum Administrator.

SEPTEMBER 28, 1933.

5. Executive Orders under Section 9 (c) of the National Industrial Recovery Act.

A. Order Prohibiting Transportation of Oil Produced in Violation of State Law.

EXECUTIVE ORDER

PROHIBITION OF TRANSPORTATION IN INTERSTATE AND FOREIGN COMMERCE OF PETROLEUM AND THE PRODUCTS THEREOF UNLAWFULLY PRODUCED OR WITHDRAWN FROM STORAGE

By virtue of the authority vested in me by the Act of Congress entitled "AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes", approved June 16, 1933, (Public No. 67, 73d Congress), the transportation in interstate and foreign commerce of petroleum and the products thereof produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder, by any board, commission, officer, or other duly authorized agency of a State, is hereby prohibited.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
July 11, 1933.

[No. 6199]

B. Order Authorizing Secretary of the Interior to Issue Rules and Regulations under Section 9 (c).

EXECUTIVE ORDER

PROHIBITION OF TRANSPORTATION IN INTERSTATE AND FOREIGN COMMERCE OF PETROLEUM AND THE PRODUCTS THEREOF UNLAWFULLY PRODUCED OR WITHDRAWN FROM STORAGE

By virtue of the authority vested in me by the Act of Congress, entitled "AN ACT To encourage national industrial recovery, to foster fair competition, and to provide for

the construction of certain useful public works, and for other purposes", approved June 16, 1933 (Public No. 67, 73d Congress), in order to effectuate the intent and purpose of the Congress as expressed in Section 9 (c) thereof, and for the purpose of securing the enforcement of my order of July 11, 1933, issued pursuant to said act, I hereby authorize the Secretary of the Interior to exercise all the powers vested in me, for the purpose of enforcing Section 9 (c) of said act and said order, including full authority to designate and appoint such agents and to set up such boards and agencies as he may see fit, and to promulgate such rules and regulations as he may deem necessary.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
July 14, 1933.

[No. 6204]

6. Regulations and Orders Issued by the Secretary of the Interior under Sections 10 (a) and 9 (c) of the Recovery Act.

A. Regulations IV, V, and VII, as they read when these suits were instituted. (Order of July 15, 1933, as amended July 25, 1933, and August 21, 1933.)

REGULATION IV. Every producer of petroleum shall file a statement under oath, sworn to before any duly authorized State or Federal officer, not later than the fifteenth day of each and every calendar month, beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following

information for the given field involved covering the preceding calendar month:

(1) The residence and post-office address of the producer.

(2) The location of his producing properties and wells, the allowable production for each property and well as prescribed by the proper State agency for both property and wells.

(3) The daily production in barrels produced from each property and well.

(4) A report of all deliveries of petroleum showing the names and places of business of all persons to whom such petroleum was delivered whether purchasers, consignees or transporting agencies, and the quantity involved in each delivery, transportation or other disposition thereof, together with a report of all petroleum in storage, wherever located, at the beginning and at the end of said calendar month, the place of storage and the amount in storage at each place.

(5) A declaration that no part of the petroleum or the products thereof produced and shipped has been produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or other duly authorized agency of the State in which the petroleum was produced.

REGULATION V. Every purchaser of petroleum, shipper (other than a producer) of petroleum, and refiner of petroleum (including all persons engaged in the processing of petroleum in any manner), shall file a statement under oath sworn to before any duly authorized State or Federal officer, not later

than the fifteenth day of each and every calendar month beginning with August 15, 1933, with the Division of Investigations of the Department of the Interior, unless otherwise ordered to report at more frequent intervals by the Division, which statement shall contain the following information for the preceding calendar month:

(1) The residence and post-office address of the purchaser, shipper, refiner or processor.

(2) The place and date of the receipt, the names and business addresses of the producers and/or other parties from whom the petroleum was received, the amount received of such petroleum and the amount of petroleum held in storage or otherwise on the last day of the calendar month next preceding the period covered by the report.

(3) The disposition of said petroleum, including the place and date of delivery, the amount delivered, the names and business addresses of the consignees to whom delivered, the transporting agencies, and the amount of petroleum held in storage or otherwise at the end of said calendar month.

(4) A declaration that to the best of the information and belief of the affiant, none of the petroleum received and/or disposed of was produced or withdrawn from storage in excess of the amount permitted to be produced or withdrawn from storage by any State law or valid regulation or order prescribed thereunder by any Board, Commission, Officer, or duly authorized agency of the State in which the petroleum was produced.

(5) Such other detailed information, necessary to identify properly the source of the petroleum or its products received, as may

be required from time to time by the Division of Investigations of the Department of the Interior for the proper enforcement of these rules and regulations.

REGULATION VII. All persons, natural or artificial, embraced within the terms of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73d Congress) and the Executive orders and regulations issued thereunder, shall keep and maintain available for inspection by the Division of Investigations of the Department of the Interior adequate books and records of all transactions involving the production and transportation of petroleum and the products thereof.

B. Other Pertinent Regulations in the Order of July 15, 1933.

REGULATION III. Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential and hereby required for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (Public No. 67, 73d Congress) and the orders and regulations issued thereunder, that there shall be furnished the Division of Investigations of the Department of the Interior such information as respects production, purchases and shipments as is hereinafter required, regardless of whether such production, purchases, and shipments are in interstate and foreign commerce or in intrastate commerce.

REGULATION X. These regulations may be suspended in whole or in part by the Secretary of the Interior in any region, area, field,

pool, or as applied to any particular properties or wells whenever, in his discretion, he deems their application unnecessary for the proper enforcement of the said act or orders issued thereunder, but no such suspension shall relieve any person, natural or artificial, from the duty of complying with the aforesaid act and orders; these regulations may be by him at any time amended or changed in whole or in part.

C. Order of August 2, 1933, Suspending the Application of the Regulations in Certain Areas.

Having determined that the enforcement of the Executive orders of July 11 and July 14, 1933, prohibiting the transportation in interstate and foreign commerce of petroleum and the products thereof illegally produced or withdrawn from storage, does not require the complete application of the regulations prescribed July 15, as amended July 25, 1933, pursuant to such orders, except in certain regions, the operation of such regulations is hereby limited and extended as follows:

* * * * *

5. Regulation IV is hereby suspended except in States, fields or areas in which reports are required each month from producers of petroleum under a regulation or regulations issued by any Board, Commission, Officer, or other duly authorized agency of the State acting under a State proration law.

6. Regulation V is hereby suspended except in so far as it affects purchasers, shippers, and refiners of petroleum, deriving such petroleum in whole or in part from the East Texas and Oklahoma City areas.

D. Pertinent Provisions in the Revised Regulations Issued July 20, 1934.

By virtue of and pursuant to the authority vested in me by Sections 9 (c) and 10 (a) of Title I of the Act of Congress entitled "The National Industrial Recovery Act" approved June 16, 1933 (48 Stat. 195) and the executive orders of the President of the United States No. 6199 (July 11, 1933) and No. 6204 (July 14, 1933) issued pursuant to such legislation, the regulations and amendments thereto promulgated by me on July 15, 1933, July 25, 1933, August 2, 1933, August 21, 1933, April 6, 1934, and May 21, 1934, pursuant to said authority are hereby amended by substituting therefore the following regulations in so far as future transactions thereby or hereby regulated are concerned:

* * * * *

REGULATION II. Because of the interrelation of interstate and intrastate commerce in petroleum and the products thereof and the direct effect upon interstate and foreign commerce of petroleum and the products thereof moving in intrastate commerce, it is essential for the proper enforcement of the provisions of Section 9 (c) of the National Industrial Recovery Act (48 Stat. 195) and the orders and regulations issued thereunder that records be kept and reports be furnished the Division of Investigations of the Department of the Interior fully covering such information as respects producing, refining, reclaiming, shipping, storing, transporting, buying and selling, or otherwise dealing in or handling petroleum or petroleum products as is hereinafter required, regardless of whether such transactions are in interstate

or foreign commerce or in intrastate commerce.

REGULATION IV. All persons engaged in producing, refining, reclaiming, shipping, storing, transporting, buying or selling, or otherwise dealing in or handling petroleum or the products thereof shall permit any officer, agent, or employee of the Division of Investigations of the Department of the Interior to enter upon their properties, plants, or facilities and to examine all of the books and records kept or required to be kept in accordance with these Regulations and all other books, papers, records, vouchers, run tickets, bills of lading, way-bills, charts, memoranda or other documents which are used by them in the process of producing, storing, refining, reclaiming, transporting, handling or otherwise dealing with petroleum or the products thereof, and to inspect such plants, facilities and properties and to gauge tanks and to examine wells, pipe lines, gathering systems, flow lines, pipe connections, storage tanks, loading racks, separators, pumps, meters or other measuring devices and any other equipment or instruments.

Every initial producer of petroleum and every initial manufacturer of every product of petroleum, shall accurately gauge and measure all petroleum and all products thereof before any part thereof leaves his possession or control. No means or device which prevents such accurate measurement shall be used. Complete and accurate records of all such measurements shall be kept up to date and preserved, and shall be open to the inspection of any duly authorized agent of the Division of Investigations of the Department of the Interior at all reasonable times.

REGULATION V. From the date of approval of these Regulations the following records shall be kept and preserved accurately and completely, showing the complete details of each transaction as follows:

A. By Producers:

(1) The location of the producing properties, the number and location of wells thereon, and the allowable production for each property and well as prescribed by the proper State agency.

(2) The names and addresses of all persons having any interest in or title to the petroleum at the time of its production, including those owning royalty or overriding royalty interests.

(3) An opening and closing inventory of the crude petroleum on hand each 24 hour day.

(4) The daily production in barrels of petroleum produced from each lease and well (estimated as to wells which are produced into common tankage and of which no separate gauge is made) with a notation of the allowance made for basic sediment and water, and the tanks, identified by number, into which the petroleum was produced.

(5) The amount of crude petroleum consumed, refined or processed upon the property daily.

(6) A daily record of all deliveries of crude petroleum or products thereof, showing the names and places of business of all persons to whom such petroleum or products thereof was delivered, whether purchasers, consignees or transporting agencies, the quantity involved in each delivery, transportation or other disposition, the identity of the means of transportation by which the petroleum or products thereof was removed, and the identifying numbers of tenders

where tenders may be required by State regulatory bodies or by orders issued under these Regulations.

(9) For properties capable of producing in excess of an average of 20 barrels per producing well per day, a diagram of the producing properties which shall accurately and completely show to scale the location and identifying number of each well on the properties, the location, capacity and identifying numbers of all tanks into which oil produced from said properties is run under the control of the producer prior to delivery to trunk pipe lines, the location and size of all pipe lines, flow lines, gathering systems or other outlets, and every method by which oil is delivered from said properties.

(10) True and complete copies of all reports and communications filed or required to be filed under these Regulations or orders issued under these Regulations.

(11) Such other records as may now be required under the rules and regulations of other governmental agencies, State or Federal, which supervise, regulate or tax the production of petroleum.

B. By Every Purchaser, Refiner, Storer, Shipper, or Consignor of Petroleum or Petroleum Products, and by Every Person dealing in Petroleum or Petroleum Products as a Factor, Broker, Buyer or Seller.

(1) An opening and closing inventory of crude petroleum and petroleum products on hand each 24 hour day.

(2) The daily receipts of crude petroleum and the products thereof showing the amount received, the place and date of each receipt, the tanks identified by number into which received, the names and addresses of all producers or other persons from whom the crude petroleum and the products

thereof were received, and a description identifying the transporting agency by which received.

(3) The amount of crude petroleum and the products thereof used or otherwise disposed of daily showing the amount run to stills and the amount and type of petroleum products produced.

(4) A daily record of all deliveries of petroleum and the products thereof including the names and addresses of purchasers and a description identifying the transporting agency delivering such petroleum and petroleum products, and the identifying numbers of tenders where tenders may be required by State regulatory bodies or by orders issued under these Regulations.

(5) True and complete copies of all reports and communications filed or required to be filed under these regulations or orders issued under these Regulations.

(6) Such other records as may now be required under the rules and regulations of other governmental agencies, State or Federal, which supervise, regulate or tax purchasing, refining, storing, shipping or consigning or otherwise dealing in as a factor, broker, buyer or seller of petroleum and petroleum products.

* * * * *

REGULATION VI. From time to time or periodically as called for by the Secretary of the Interior sworn reports on forms approved by the Secretary of the Interior shall be filed by producers, purchasers, refiners, reclamation plants, transporting agencies, shippers, or other persons dealing in or handling petroleum or its products. Each such report when called for shall show the full and accurate data required completely

to fill out such form, accurately and fully reporting the data called for from the records required to be kept under Regulation V above.

E. Order Issued July 20, 1934, Requiring Reports, Pursuant to Regulation VI of the Regulations issued July 20, 1934 (with forms "OES–3" and "OES–5" attached):

* * * * *

(2) Every refinery, reclamation plant, treating plant, gasoline plant, and every shipper of petroleum products in the East Texas area as defined in Regulation III promulgated by me on July 20th, 1934, pursuant to the aforesaid authority, shall file at the office of the Division of Investigations of the Department of the Interior in Dallas, Texas, not later than the fifteenth day of each and every calendar month beginning with the period ending August 15, 1934, for the preceding calendar month, a sworn statement on the form entitled "OES–3" which is attached hereto and is hereby approved by me, fully and accurately giving the data required to fill out such form.

(4) Every producer of petroleum in the East Texas area as above defined, shall file at the office of the Division of Investigations of the Department of the Interior in Dallas, Texas, not later than the fifteenth day of each and every calendar month beginning with the period ending August 15, 1934, for the preceding calendar month, a sworn statement on the form entitled "OES–5" which is attached hereto and is hereby approved by me, fully and accurately giving the data required to fill out such form.

Form O. E. S.–3.

UNITED STATES DEPARTMENT OF THE INTERIOR, DIVISION OF INVESTIGATIONS

Report required under Interior Regulation VI of section 9–C

Monthly report of _____ at _____, _____
(Name of refinery, reclamation, treating, gasoline plant or shipper) (Location of plant or loading rack) (P. O. address)

Refiner's monthly report in barrels (42's) for _____, 193__
(Month)

RECEIPTS—CRUDE OIL

Tank no.	Tank capacity	Tank height	Stock on hand first of month (barrels)	From whom purchased or received		Lease	County	Pipe line, gathering system, railroad or trucks delivering oil				Received (barrels)
				Name	Address			Name	Address	Car initials and number	Truck license number	
Totals												

DELIVERIES—CRUDE OIL

To stills (bbls.)	Kind of carrier	To pipe lines, gathering systems, railroads and trucks				Destination	Barrels delivered	Total deliveries and runs to stills (bbls.)	Over and short (bbls.)	Stock on hand last of month (bbls.)
		Name of carrier	Address of carrier	Consignee	Address of consignee					
Total										

_____
(Owner, officer or agent)

State of _____
County of _____

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the above instrument, who, being by me duly sworn, on oath states that he is (owner, officer, or agent) operating or employed by _____, in the capacity of _____, that he made or caused to be made the above report, including the reverse side hereof, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 193__.

_____
Notary Public in and for _____ *County* _____, *State.*

INSTRUCTIONS: This report to be submitted to the Department of the Interior, Division of Investigations, Oil Enforcement, Dallas, Texas, on or before the 15th day of each calendar month, and should show complete data for the preceding calendar month. Include in crude receipts all crude run from own wells. Include in deliveries of refined products, deliveries to own retail stations.

PENALTY FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than ten years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements or use or cause to be made or used any false * * * certificate, affidavit or deposition, knowing the same to contain any fraudulent or fictitious statement * * *" relating to any matter within the jurisdiction of any Governmental department or agency.

[Reverse side follows]

Stocks, receipts and deliveries of products of petroleum (Regulation VI, Section 9 C)

RECEIPTS

(Owner, officer or agent)

State of .....
County of .....

Before me, the undersigned authority, on this day personally appeared ....., known to me to be the person whose name is subscribed to the above instrument, who, being by me duly sworn, on oath states that he is (owner, officer, or agent) operating or employed by ....., in the capacity of ..... that he made or caused to be made the above report, including the reverse side hereof, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

SUBSCRIBED AND SWORN TO before me this ..... day of ....., 193..

Notary Public in and for ..... *County* ....., *State.*

INSTRUCTIONS: This report to be submitted to the Department of the Interior, Division of Investigations, Oil Enforcement, Dallas, Texas, on or before the 15th day of each calendar month, and should show complete data for the preceding calendar month. Include in crude receipts all crude run from own wells. Include in deliveries of refined products, deliveries to own retail stations.

PENALTY FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than ten years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements or use or cause to be made or used any false * * * certificate, affidavit or deposition, knowing the same to contain any fraudulent or fictitious statement * * *" relating to any matter within the jurisdiction of any Governmental department or agency.

[Reverse side follows]

Stocks, receipts and deliveries of products of petroleum (Regulation VI, Section 9 C)

RECEIPTS

Kind of product	Tank number	Tank capacity	Stock on hand first of month		From own stills		From other sources		Kind of carrier	Name of carrier	Address of carrier	Total receipts from other sources	
			Barrels	Gallons	Barrels	Gallons	Name	Address				Barrels	Gallons
Total													

DELIVERIES (TO PIPE LINES, GATHERING SYSTEMS, RAILROADS OR TRUCKS)

Kind of product	Kind of carrier	Name of carrier	Address of carrier	License nos. of trucks	Tank car initial and no.	Consignee	Address of consignee	Destination	Quantity delivered		Over & short		Stock on hand last of month	
									Barrels	Gallons	Barrels	Gallons	Barrels	Gallons
Total														

INSTRUCTIONS: Casinghead plants shall give the information requested above, showing origin of gas received at plant, and execute the affidavit provided on the reverse side hereof.

Detailed report of production by days—This report shall be filed separately as to each lease

(See reverse side)

Form O. E. S. No. 5

UNITED STATES DEPARTMENT OF THE INTERIOR, OFFICE OF THE SECRETARY, DIVISION OF INVESTIGATIONS

Oil enforcement

[This report shall be filed separately as to each lease]

Producer's monthly report for month of _____, 19__

Report of _____ (Company or operator) _____ (Principal place of business—town) _____ (Post-office address—P. O. box, office building, or street number)

_____ (Residence address—P. O. box or street address) _____ (Field office address) Total number of leases operated by you _____

Lease		Total current allowable for month	
Survey		Back allowable scheduled to be produced during month	
County		Back allowable permits Nos.	
Acres		Total oil on hand at beginning of month	
		Current production for month	
		Back allowable actually produced during month	
		Total oil available for deliveries (amount on hand plus production)	

NEW WELLS COMPLETED

Well No. _____ Date _____ Well No. _____ Date _____
Well No. _____ Date _____ Well No. _____ Date _____
Well No. _____ Date _____ Well No. _____ Date _____

Wells flowing _____
Wells agitating and pumping _____
Wells dead _____
Total number wells on lease _____

LIST TANKS BY NUMBERS TO WHICH LEASE IS CONNECTED:

Total barrels capacity of tanks _____

LOCATION OF ALL TANKS TO WHICH LEASE IS CONNECTED, NOT ON THIS LEASE:

Is lease connected to casinghead plant? _____ (Yes or No)

Give name of casinghead plant, if so connected _____

DELIVERIES DURING MONTH	Barrels
Pipe-line runs	
Name and address of company gathering oil	
Name and address of purchaser or consignee	
Deliveries to railroad tank cars	
Name of railroad _____ Station _____ Loading rack	
Deliveries to trucks	
License Nos. of trucks	
Truck movement permit Nos.	
Other disposition of fuel and tank bottoms	
Tank-bottom permits (allowable oil): Date _____ barrels	
Date _____ barrels _____ Date _____ barrels	
Date _____ barrels _____ Date _____ barrels	
Total deliveries of oil during month	
Total oil on hand at end of month	

No other oil was produced or permitted to be produced from any well on said above-described property, nor was any oil delivered to any person, pipe line, railroad, truck, or purchaser from the above-described property during the period covered by this report except as is fully shown on said report.

_____ (Owner, officer, or agent)

STATE OF _____ COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, known to me, who, being by me duly sworn, on oath states that he is (owner, officer, agent) operating or employed by _____ in the capacity of _____, that he made or caused to be made the above report, including the reverse side hereof, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 193__.

_____ *Notary Public in and for* _____ *County,* _____ *State*

PENALTY—FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than 10 years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements or use or cause to be made or used any false * * * certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement * * *" relating to any matter within the jurisdiction of any governmental department or agency.

INSTRUCTIONS

The original of this form shall be filed with the Department of the Interior, Division of Investigations, Oil Enforcement, Dallas, Tex., on or before the 15th day of each calendar month, and shall be complete as to data covering the calendar month next preceding the date of filing. The affidavits required before this report may be filed shall be complete and shall cover

(Owner, officer, or agent)

STATE OF _____ COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____ known to me, who, being by me duly sworn, on oath states that he is (owner, officer, agent) operating or employed by _____ in the capacity of _____, that he made or caused to be made the above report, including the reverse side hereof, that he has knowledge of all the facts therein, that said report is true and correct, and that no pertinent matter inquired about in said report and within his knowledge has been omitted from said report.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 193__.

Notary Public in and for _____ *County,* _____ *State*

PENALTY—FOR FALSE CERTIFICATION

Section 35 of the Criminal Code, as amended, provides a penalty of not more than $10,000 or imprisonment of not more than 10 years, or both, for knowingly and willfully making or causing to be made "any false or fraudulent statements or use or cause to be made or used any false * * * certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement * * * relating to any matter within the jurisdiction of any governmental department or agency.

INSTRUCTIONS

The original of this form shall be filed with the Department of the Interior, Division of Investigations, Oil Enforcement, Dallas, Tex., on or before the 15th day of each calendar month, and shall be complete as to data covering the calendar month next preceding the date of filing. The affidavits required before this report may be filed shall be complete and shall cover the data contained on all parts of said report.

(See reverse side)
[Reverse side follows]

If the production from any well is run and gaged separately the appropriate data with respect thereto shall be shown. The appropriate data shall likewise be shown for each well separately during the test period. Where more than one well are produced into common tankage, indicate such fact on the report, bracketing such wells, showing which wells are produced into common tankage and showing the data daily as to the aggregate production of such wells so producing into common tankage, reporting separately for each battery of common tankage where different groups of wells produce separately into different common tankage.

BARRELS PRODUCED

Day of month	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Well No.	Total for day
1																				
2																				
3																				
4																				
5																				
6																				
7																				
8																				
9																				
10																				
11																				
12																				
13																				
14																				
15																				
16																				
17																				
18																				
19																				
20																				
21																				
22																				
23																				
24																				
25																				
26																				
27																				
28																				
29																				
30																				
31																				
TOTALS																				
Test data																				